ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
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MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet August 14, 2007 at 10 a.m. in room 154 Capitol Annex. See **tentative agenda** on pages **153-155** of this Administrative Register.

Part 1 of 2

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KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, or Major Function	Specific Regulation

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ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
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(See KRS Chapter 13A for specific provisions)

Filing and Publication

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing and comment period information, regulatory impact analysis and tiering statement, fiscal note, federal mandate comparison, and incorporated material information. Those administrative regulations received by the deadline established in KRS 13A.050 shall be published in the Administrative Register.

Public Hearing and Public Comment Period

The administrative body shall schedule a public hearing on proposed administrative regulations which shall not be held before the 21st day or later than the last workday of the month of publication. Written comments shall also be accepted until the end of the calendar month in which the administrative regulation was published.

The administrative regulation shall include: the place, time, and date of the hearing; the manner in which persons may submit notification to attend the hearing and written comments; that notification to attend the hearing shall be sent no later than 5 workdays prior to the hearing date; the deadline for submitting written comments; and the name, position, address, and telephone and fax numbers of the person to whom notification and written comments shall be sent.

The administrative body shall notify the Compiler, by phone and letter, whether the hearing was held or cancelled and whether written comments were received. If the hearing was held or written comments were received, the administrative body shall file a statement of consideration with the Compiler by the fifteenth day of the calendar month following the month of publication.

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

Review Procedure

After the public hearing and public comment period processes are completed, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or 30 days after being referred by LRC, whichever occurs first.

EMERGENCY ADMINISTRATIVE REGULATIONS FILED AS OF NOON, JULY 15, 2007

STATEMENT OF EMERGENCY
106 KAR 2:020E

(1) An emergency administrative regulation was required by the deadline established by KRS 36.474(5). The emergency administrative regulation has not been created until now due to a variety of circumstances. Explanation and justification follows:

(a) Delays in identifying the most appropriate candidates for appointment to the Military Family Assistance Trust Fund Board caused a significant delay in the preliminary board meeting.

(b) The outcome of the board proceedings created a need for a full-time staff member in order to initiate the program and manage the daily execution of the trust fund. The staff member joined the Department of Military Affairs on 1 May 2007.

(c) It is critical to have these emergency administrative regulations become effective immediately as provided in KRS 13A.190(1) to relieve urgent hardships and provide for the welfare of eligible military members and their families.

(2) An ordinary administrative regulation is not sufficient at this point due to the prolonged delay associated with the Military Family Assistance Fund's implementation.

(a) Each day a delay affects the imminent welfare of Kentucky citizens serving in the Global War on Terrorism. The Trust Fund applies to all deployed military members to include Active Duty, National Guard, and Reserve forces who have a Kentucky Home of Record.

(b) There is an extreme urgency associated with the effective date of the Military Family Assistance Trust Fund administrative regulation. In order to immediately and properly execute the trust fund and provide assistance to eligible military members, there must be an emergency administrative regulation filed.

(3) This emergency regulation shall be replaced by an ordinary administrative regulation.

(4) The ordinary administrative regulation was filed with the Regulations Compiler on 25 June 2007.

ERNIE FLETCHER, Governor
JUDY GREENE-BAKER, COLONEL, President of Board

GENERAL GOVERNMENT CABINET
Department of Military Affairs
Military Family Assistance Trust Fund Board
(New Emergency Administrative Regulation)

106 KAR 2:020E. Military Family Assistance Trust Fund.

RELATES TO: KRS 36 470, 36.474, 36.476
STATUTORY AUTHORITY: KRS 36.474(3), (5)
EFFECTIVE: June 25, 2007
NECESSITY, FUNCTION AND CONFORMITY: KRS 36.470 establishes the military family assistance trust fund. KRS 36.474(3), (5) require the board to promulgate an administrative regulation establishing the maximum amount of grant assistance a person may receive in a twelve (12) month period and to establish a need-based application for trust fund grants. This administrative regulation establishes the application process and the maximum amount of grant assistance as required by KRS 36.475.

Section 1. Military Family Assistance Trust Fund Board. The board shall receive a report on all funds expended on applications and shall be informed on the reason for any application being disapproved.

Section 2. Application for Trust Funds. Any qualified service member, Kentucky resident spouse, or legal dependent may submit a "Military Family Assistance Trust Fund Application, DMA Form 43-1" for application of grant funds for a need-based emergency.

Section 3. Payment of Grants. (1) A maximum of $2,500 may be approved for a single application as identified on DMA Form 43-1. A maximum of $5,000 per fiscal year per service member or family of a service member may be approved.

(2) Amounts greater than the $2,500 single application cap and $5,000 fiscal year maximum cap may be approved by a majority vote of the board members. In the case of a catastrophic event or in the case of at least a twenty-five (25) percent loss of annual income, the Board may approve an amount greater than the cap amounts.

(3) Internal control measures shall be used prior to awarding a grant, including obtaining necessary proof verifying the requested need.

Section 4. Incorporation by Reference. (1) "Military Family Assistance Trust Fund Application, DMA Form 43-1", 1 May 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Administrative Services Division, Office of Management and Administration, Department of Military Affairs, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168, or by calling the Office at (502) 607-1156 or (502) 607-1738, Monday through Friday, 8 a.m. to 4.30 p.m.

COL JUDY GREENE-BAKER, President
APPROVED BY AGENCY: June 20, 2007
FILED WITH LRC: June 25, 2007 at 4 p.m.
CONTACT PERSON: Mr. Steven E. Engels, Policy Analyst III, Administrative Services Division, Office of Management and Administration, Department of Military Affairs, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168, phone (502) 607-1156, fax (502) 607-1394. Alternate contact is Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone (502) 607-1738, fax (502) 607-1240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mr. Steven E. Engels, Policy Analyst III
(1) Provide a brief summary of:
(a) What this administrative regulation does: This regulation establishes guidance for the establishment of the Military Family Assistance Trust Fund and its governing Board. It provides eligibility and basic criteria for applying for and granting funds to approved applicants. It additionally provides guidance for required reports that are to be submitted.
(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation establishes how the board members will be appointed, the term limits of the board, and the internal workings and timeliness of board meetings and required actions. It additionally provides guidance on the eligibility and grant caps for recipients.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Military Family Assistance Trust Fund Board and the Adjutant General in the execution of this program for approving applications, as well as providing guidance on reporting procedures.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation being established.
(a) How the amendment will change this existing administrative regulation: N/A
(b) The necessity of the amendment to this administrative regulation: N/A
(c) How the amendment conforms to the content of the authorizing statutes: N/A
(d) How the amendment will assist in the effective administration of the statutes: N/A
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-

tive regulation: This regulation is written to provide guidance in assisting spouses and dependents of service members who are deployed to provide emergency funds to alleviate undue financial hardships as a direct result of mobilization of the service member. This trust fund is to be used as a last resort when all other reasonable steps have been utilized for assistance.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: No action is required of any entity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) There is no cost for any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation will allow for the establishment of guidance on how to execute this trust fund in assisting the service member and his/her family in the resolution of any undue hardship generated as a result of mobilization.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initially this program will cost an estimated $500,000 annually to establish and provide grants to applicants. This program was funded $500,000 in each year of the current biennium per HB 380 2006 RS (Ky Acts 252) as an additional funding increase for the Department of Military Affairs.

(b) On a continuing basis: It is estimated that $500,000 will be needed on an annual basis to meet the needs as established by this regulation. Per HB 380 2006 RS (Ky Acts 252), this continued funding is now a part of the baseline budget for the Department of Military Affairs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of this trust fund is general fund dollars as well as any grants, contributions, appropriations, or other moneys made available for the purpose of the trust fund either public or private.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase of funds at this time. This is a new program being established with no historical record of requirements.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or relate to fees.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Military Affairs, Division of Administrative Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 36.470 to 36.476.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? Initially this program will cost an estimated $500,000 to establish and provide grants to applicants. HB 380 2006 RS (Ky Acts ch 252) earmarked $100,000 of the $500,000 total program funding specifically for the administration of this program. The remaining $400,000 is for programmatic grants to eligible applicants

(d) How much will it cost to administer this program for subsequent years? It is estimated that $500,000 will be needed on an annual basis to meet the needs as established by this regulation. Per HB 380 2006 RS (Ky Acts ch. 252), this continued funding is now a part of the baseline budget for the Department of Military Affairs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): This definitional administrative regulation has no fiscal impact

Expenditures (+/-): This definitional administrative regulation has no fiscal impact

Other Explanation: This definitional administrative regulation has no fiscal impact

STATEMENT OF EMERGENCY
806 KAR 17:545E

Part XXIII, of 2006 Ky. Acts ch. 252, sections 1 through 8, authorized the Office of Insurance to pilot a small business employer insurance subsidy program to make health insurance more affordable for employers of two (2) to twenty-five (25) employees who provide a health insurance benefit. This program, the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program became effective on January 1, 2007. In July 2006, the Office of Insurance promulgated an administrative regulation, 806 KAR 17:545, which established eligibility requirements for employers and employees to qualify for the ICARE Program and obtain health care incentive payments to offset the cost of health insurance for eligible employees. Since implementation of this regulation, the Office has identified several provisions which are unclear for employers. This has resulted in some employers not applying for the ICARE Program due to the assumption that they would not be eligible, and the denial of ICARE Program eligibility to numerous small group employers. Therefore, it is believed that many individuals employed by these small group employers continue to lack affordable health insurance coverage and contribute to the overall uninsured population in the state of Kentucky. In order to limit individual exposure to the high cost of health care in this state, protect human health by offering more affordable health insurance coverage for employees of small group employers in Kentucky, and remove some of the barriers to ICARE Program eligibility, it is necessary to promulgate this emergency regulation and clarify requirements for enrollment in this program. This emergency regulation shall be replaced by an ordinary administrative regulation The ordinary administrative regulation was filed with the Regulations Compiler on June 29, 2007. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
TIM LEDONNE, Commissioner
JULIE MIX MCPEAK, Executive Director

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Emergency Amendment)

806 KAR 17:545E. ICARE Program employer eligibility, application process, and requirements.

RELATES TO 2006 Ky. Acts ch. 252, Part XXIII, secs.1-8, 13,

22

STATUTORY AUTHORITY: KRS 304 2-110(1), 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and 1(3), 2(5)

EFFECTIVE: June 29, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and [1](3) require the office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304 9-020(1).

(2) "Complete ICARE Program application" means the ICARE Program application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300% of the federal poverty level or below, which may include:

1. Employers quarterly unemployment tax statement; or

2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan;

(c) A copy of the employer's application or renewal information for coverage to the insurer;

(d) Employee ICARE Program high-cost condition certification, if applicable; and

(e) Any additional attachments, if applicable.

(3) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec 1(3).

(4) "Eligible employer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2).

(5) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(6) "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(7) "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

(8) "Health care incentive payment" means a payment as established in 2006 Ky. Acts ch. 252, Part XXIII, secs 2(3) and 4(1).

(9)[~~(7)~~] "Health benefit plan" is defined in KRS 304.17A-005(22).

(10)[~~(8)~~] "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

(11)[~~(9)~~] "ICARE Program high-cost condition" means a high-cost condition as.

(a) Defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(5); and

(b) Established in 806 KAR 17.540

(12)[~~(10)~~] "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(13)[~~(11)~~] "ICARE Program participating insurer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(6).

(14)[~~(12)~~] "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(15)[~~(13)~~] "Insurer" is defined in KRS 304 17A-005(27).

(16)[~~(14)~~] "Office" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(7) and KRS 304.1-050(2).

~~(17)[(15) "Owner" means an individual with an ownership interest in the business.~~

~~(16)~~] "Qualified health benefit plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(8).

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2), the office shall consider:

(a) Full time employees; and

(b) Full time equivalents rounded to the nearest whole number. [~~Individuals currently employed by the employer; and~~

~~(b) Individuals with an ownership interest~~]

(2) The average annual salary of the employer group shall not exceed 300% of the most current federal poverty level for a family of three (3) [~~an individual~~] To determine the average annual salary of the employer group pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(4), the office shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee.

1. With an ownership interest in the business;

2. Who is a Medicare-eligible employee;

3. Who has attained age sixty-five (65), or

4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of [~~without an ownership interest in~~] the business.

Section 3. Application for Participation in the ICARE Program. (1) An eligible employer who desires to participate in the ICARE Program and.

(a) Who has not provided employer-sponsored health benefit plan coverage to its employees within the previous twelve (12) months, shall submit a complete ICARE Program application within 120 [~~thirty-one (31)~~] days of receiving notice of approval for coverage under a qualified health benefit plan;

(b) Who currently provides employer-sponsored health benefit plan coverage to its employees under a qualified health benefit plan and has an eligible employee with a diagnosed ICARE high-cost condition, shall submit a complete ICARE Program application at any time; or

(c) Who has been terminated from the ICARE Program for any reason other than material misrepresentation or fraud, shall submit a complete ICARE Program application no earlier than sixty (60) days prior to the anniversary of the employer's previous ICARE Program year.

(2) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of an application for the ICARE Program by.

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application [~~from employees~~]; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3:210 through 806 KAR 3:230.

Section 4. Application Process. (1) Within sixty (60) days of receiving a complete ICARE Program application, the office shall make a determination of the employer's eligibility for the ICARE

Program and provide written or electronic notification to the employer regarding eligibility.

(2) Within sixty (60) days of receiving an incomplete ICARE Program application, the office shall provide the employer with a written or electronic notification of:

(a) Ineligibility of the employer, if the application includes information which makes an employer ineligible for the ICARE Program; or

(b) Any [What] information that is missing or incomplete.

(3) If an employer receives notification of ineligibility for the ICARE Program, the employer may submit within thirty (30) days from the date of the notification a written request to the office for reconsideration in accordance with Section 8 of this administrative regulation.

(4) Upon approval of ICARE Program eligibility by the office under a program eligibility category as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3), an eligible employer shall not be allowed to reapply to the ICARE Program under a different program eligibility category.

Section 5. Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the office within thirty (30) days of the date of the change.

Section 6. Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the ICARE Program year renewal date, the office shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the office:

(a) A written request for renewal of ICARE Program participation; and

(b) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8.

(3) Within thirty (30) days of receiving a request for renewal, the office shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 7. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The office determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2006 Ky Acts ch. 252, Part XXIII, secs. 1 through 8:

1. Upon completion of an annual review for the ICARE Program year reviewed; or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(5);

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application [to the ICARE Program];

(d) The employer requests termination from the ICARE Program;

(e) The employer ceases business operations in Kentucky; or

(f) The employer fails to cooperate in an annual review as described in Section 10 of the administrative regulation.

(2) Prior to terminating an ICARE Program participating employer, the office shall provide written notification to the employer, which shall include:

(a) The reason for termination as identified in subsection (1) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification; and

(c) Instructions for filing an appeal if dissatisfied with the termination.

Section 8. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 or 6 of this administrative regulation or termination by the office pursuant to Section 7 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing and shall provide the basis for reconsideration, including any new relevant information.

(2) The office shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the office's determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 9. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17.555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The office shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1) for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the office based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the office all health care incentive payments received by the employer for the period of ineligibility determined by the office.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1).

Section 10. Annual Review. The office may make or cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8, 806 KAR 17:540, 806 KAR 17.555 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 11. Response to Office Inquiry. If an employer receives an inquiry from the office relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 12. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on July 1, 2007.

Section 13. Incorporation by Reference. (1) "ICARE-APP-1", (6/2007) [(12/2006)], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office Web site at http://doi ppr.ky gov/kentucky/.

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: June 20, 2007
FILED WITH LRC: June 29, 2007 at noon
CONTACT PERSON: Melea Rivera, Health Policy Specialist II, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application appeals process, annual review, health care incentive payment procedures, and eligibility criteria for employers wishing to participate in the Insurance Coverage Affordability and Relief to Small Employers (ICARE) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2006 Ky. Acts ch. 252, Part XXIII secs. 1-8 in creating administrative regulations to further clarify and establish the various processes for participation in the ICARE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office of Insurance to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes. This administrative regulation assists in the effective administration of the statutes by establishing eligibility requirements, ICARE Program application, enrollment and appeal processes, annual review and payment of health care incentives.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides definitions for "full time employee" and "full time equivalents", expands the timeframe for a previously uninsured group to submit an application, changes the family size for consideration in an employer groups salary calculation, makes conforming or technical changes to the regulation required under KRS Chapter 13A, and provides a future effective date for requirements, implementation, and enforcement.

(b) The necessity of the amendment to this administrative regulation: In order to limit exposure to the high cost of health care in this state, protect human health by offering more affordable health insurance coverage for employees of small group employers in Kentucky and remove some of the barriers to ICARE Program eligibility, it is necessary to promulgate this regulation and clarify requirements for enrollment in this program

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304 2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office of Insurance to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." This amendment to the administrative regulation and material incorporated by reference is conforming with authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation and material incorporated by reference will assist in the effective administration of the statutes by clarifying the eligibility requirements, ICARE Program application, and salary calculation process pursuant to recommendations received during the initial months of ICARE Program operation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 40,716 Kentucky licensed health insurance agents who assist employers of small business to obtain health insurance coverage. Approximately 4,000 small business employers with 20,000 employees may be eligible for the ICARE Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agents assisting employers will be required to complete and submit the incorporated ICARE Program application and other required documentation within the prescribed timeframes. Employees with high-cost conditions will be required to complete the ICARE Program High-Cost Condition Certification, which is part of the ICARE Program application. Additionally, an ICARE Program participating employer will be required to notify the Office of Insurance of any changes in the employer's application during the ICARE Program year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated that costs associated with submitting an ICARE Program application and notifying the Office of Insurance of any changes will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agents who comply with the requirements of this administrative regulation will be able to assist small group employers who are eligible for obtaining health care incentive payments that may defray some of the cost of health insurance. Employers of small groups that meet and comply with the requirements of this administrative regulation may participate in the ICARE Program and receive a monthly health care incentive payment for each eligible employee.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Costs of implementing this administrative regulation on an initial basis are projected to be $145,670 for the Office of Insurance. Twenty million dollars have been allocated from the General Fund for the ICARE Program.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are projected to be $161,550 for the Office of Insurance. Twenty million dollars have been allocated from the general fund for the ICARE Program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance. Twenty million dollars have been allocated from the general fund to administer the ICARE Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? (No. Tiering is not applied because this administrative regulation applies equally to all employers who wish to qualify for the ICARE Program. Furthermore, all Kentucky licensed health insurance agents who assist employers with the ICARE Program application will be required to comply with this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Office of Insurance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program."

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue for state government will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue for state government will be generated as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, on an initial basis (fiscal year 2006-07) are estimated to be $145,670 for the Office of Insurance. An appropriation of 20 million dollars from the General Fund will fund the program for two years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, are estimated to be $161,550 for the Office of Insurance for fiscal year 2007-08. An appropriation of 20 million dollars from the General Fund will fund the program for two years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF EMERGENCY
806 KAR 17:555E

Part XXIII, of 2006 Ky. Acts ch. 252, sections 1 through 8, authorized the Office of Insurance to pilot a small business employer insurance subsidy program to make health insurance more affordable for employers of two (2) to twenty-five (25) employees who provide a health insurance benefit. This program, the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program became effective on January 1, 2007. In July 2006, the Office of Insurance promulgated an administrative regulation, 806 KAR 17.555, which established eligibility requirements for employers and employees to qualify for the ICARE Program and obtain health care incentive payments to offset the cost of health insurance for eligible employees. Since implementation of this regulation, the Office has identified several provisions which are unclear and burdensome for insurers. This has resulted in the denial of ICARE Program eligibility to numerous small group employers. Therefore, it is believed that many individuals employed by these small group employers continue to lack affordable health insurance coverage and contribute to the overall uninsured population in the state of Kentucky. In order to limit exposure to the high cost of health care in this state, protect human health by offering more affordable health insurance coverage for employees of small group employers in Kentucky, and remove some of the barriers to ICARE Program eligibility, it is necessary to promulgate this emergency regulation and clarify requirements for enrollment in this program. This emergency regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation was filed with the Regulations Compiler on June 29, 2007. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
TIM LEDONNE, Commissioner
JULIE MIX MCPEAK, Executive Director

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Emergency Amendment)

806 KAR 17:555E. ICARE Program requirements.

RELATES TO: KRS 304.14-120, 304.14-430 -304.14-450, 304.17A-095 -304.17A-0954, 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, 13, 22, 42 U.S.C. sec. 1396e

STATUTORY AUTHORITY: KRS 304 2-110(1), 2006 Ky. Acts ch.252, Part XXIII, secs. 2(5) and 8(2)

EFFECTIVE: June 29, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 8(1) requires an insurer which offers a health benefit plan to disclose the availability of a health insurance purchasing program as authorized in 42 U.S.C. sec. 1396e to eligible employer groups and the Insurance Coverage, Affordability and Relief to Small Employers Program. This administrative regulation establishes requirements for ICARE Program participating insurers, qualified health benefit plans, disclosure of information, data reporting, and annual review by the office.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Basic health benefit plan" is defined in KRS 304.17A-005(4).

(3) "Consumer-driven health plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(1).

(4) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(5) "Eligible employer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2).

(6) "Enriched health benefit plan" means a health benefit plan which:

(a) Is not a basic or consumer-driven health benefit plan; and

(b) Includes all benefits established in KRS Chapter 304 subtitle 17A.

(7) "Health benefit plan" is defined in KRS 304.17A-005(22).

(8) "Health care incentive payment" means a payment as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1).

(9) "Health risk assessment" is defined 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(4).

(10) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

(11) "ICARE Program participating insurer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(6).

(12) "ICARE Program year" means a one (1) year period of time beginning on an employer's enrollment date in the ICARE Program.

(13) "Office" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(7).

(14) "Qualified health benefit plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(8).

(15) "Small group" is defined in KRS 304.17A-005(42).

Section 2. Health Risk Assessment. [~~Requirements of an ICARE Program Participating Insurer. (1) If an employer discontinues a health benefit plan offered by an ICARE Program participating insurer that is not a qualified health benefit plan and obtains coverage under a qualified health benefit plan offered by the same ICARE Program participating insurer, the insurer shall be limited to adjusting the risk factors in determining the new premium rate for the employer group to the requirements established under KRS 304.17A-0952(5)(b).~~

~~(2)~~] An ICARE Program participating insurer shall:

(1)[~~(a)~~] Within sixty (60) days of receiving notification of a newly-enrolled ICARE Program participating employer by the office, conduct a health risk assessment as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 3(4) for each eligible employee of the employer; and

(2)[~~(b)~~] Within sixty (60) days of conducting a health risk assessment as established in subsection (1) of this section [~~paragraph (a) of this subsection~~], and pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec 3(4), offer the following:

(a)[~~1.~~] A wellness program;

(b)[~~2.~~] Case management services; and

(c)[~~3.~~] Disease management services.

Section 3. Qualified Health Benefit Plans. (1) All health benefit plans approved by the office for use in the small group or employer-organized association market shall be deemed qualified health benefit plans. [~~An ICARE Program participating insurer shall notify the office in writing of any health benefit plans previously approved by the office that meet the requirements of 2006 Ky. Acts ch. 252, Part XXIII, secs. 3(2) and 3(4). The notification shall:~~

~~(a) Include the approved form number of each health benefit plan;~~

~~(b) Identify each health benefit plan as a:~~

~~1. Consumer-driven health benefit plan;~~

~~2. Basic health benefit plan, or~~

~~3. Enriched health benefit plan, and~~

~~(c) Include a request that an identified health benefit plan be designated as a qualified health benefit plan by the office.~~]

(2) If an ICARE Program participating insurer develops a new health benefit plan or amends a previously approved health benefit plan to meet the requirements of 2006 Ky. Acts ch. 252, Part XXIII, secs. 3(2) and 3(4), the insurer shall submit[~~:~~

~~(a) Submit~~] for approval by the office, a:

(a)[~~1.~~] Form filing for each new or amended health benefit plan in accordance with KRS 304.14-120(2), 304.14-430 - 304.14-450, and 806 KAR 14:007; and

(b)[~~2.~~] Rate filing for each new or amended health benefit plan in accordance with KRS 304.17A-095, 304.17A-0952, 304.17A-0954 and 806 KAR 17:150, as applicable[~~; and~~

~~(b) Include with a filing identified in paragraph (a) of this subsection, a cover letter clearly requesting that a new or amended health benefit plan be designated as a qualified health benefit plan.~~

~~(3) If the ICARE Program participating insurer has complied with subsections (1) and (2) of this section, the office shall:~~

~~(a) Designate a health benefit plan approved by the office as a qualified health benefit plan; and~~

~~(b) Notify the insurer of the office designation.~~]

Section 4. Requirements of Disclosure. Pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 8(1), a disclosure shall:

(1) Be distributed to an eligible employer by an insurer in written or electronic format;

(2) Include information relating to availability of the:

(a) Health Insurance Premium Payment (HIPP) Program by stating the following: "The Health Insurance Premium Payment (HIPP) Program is administered by the Department for Medicaid Services and pays for the cost of private health insurance premiums. The Program reimburses individuals or employers for private health insurance payments for individuals who are eligible for Medicaid when it is cost effective. For more information, or to see if you are eligible, contact the Department for Medicaid Services, HIPP Program, 275 East Main Street, Frankfort, Kentucky 40621."; and

(b) ICARE Program, which shall include:

1. Information relating to an eligible employer and employee;

2. Amount of initial health care incentive payment and incremental reduction in rates pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1);

3. [~~A list of qualified health benefit plans designated by the office and offered by the insurer;~~

~~4.~~] Limited enrollment of eligible employers under the ICARE Program; and

4 [~~5.~~] Office Web site and toll-free telephone number of the ICARE Program; and

(3) Be [~~Beginning on January 1, 2007, and annually thereafter, be~~] submitted annually to the office for review.

Section 5. ICARE Program Data Reporting Requirements. (1)(a) An [~~No later than January 1, 2007, an~~] ICARE Program participating insurer shall designate a contact person to respond to inquiries of the office relating to the ICARE Program and provide to the office the contact person's:

1. Name;

2. Telephone and fax numbers; and

3. Electronic mail address; and

(b) If the information requested in paragraph (a) of this subsection is changed, the insurer shall notify the office within fifteen (15) days of the date of the change.

(2) No later than the fifteen (15) day of each month [~~Beginning on January 15, 2007, and monthly thereafter~~], the office shall report electronically to the designated contact person of an ICARE Program participating insurer as established in subsection (1) of this section, the following information for each newly enrolled and terminated ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group; and

(c) The ICARE Program year effective date.

(3) Each [~~Beginning on January 1, 2007, and monthly thereafter, each~~] ICARE Program participating insurer shall collect the following information monthly for each ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group;

(c) Name of the qualified health benefit plan covering eligible employees,

(d) Month of coverage;

(e) Average monthly premium of each eligible employee;

(f) Number of eligible employees covered under the qualified health benefit plan; and

(g) Termination date, if applicable.

(4) [~~Beginning on January 20, 2007, and~~] No later than the 20th day of each month [~~thereafter~~], an ICARE Program participating insurer shall report to the office information identified in subsection (3) of this section in a format as established in the form, ICARE Report-1.

(5) For the calendar year ending December 31, 2007, and annually thereafter, an ICARE Program participating insurer shall submit to the office, a report of the average annual premium of each ICARE Program participating employer. The annual report shall:

(a) Include for each ICARE Program participating employer:

1. ICARE Program identification number;
2. Name of the employer group; and
3. Average annual premium paid, and

(b) Be submitted in a format as established in the form, ICARE Report-1:

1. No later than February 1, for the previous calendar year; and
2. In an electronic or written format.

Section 6. Annual Office Review of ICARE Books and Records. The office may make or cause to be made an annual review of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:

(1) 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8, 806 KAR 17:540, 806 KAR 17.545 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 7. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on July 1, 2007.

Section 8 Incorporation by Reference. (1) "ICARE Report-1", (12/2006), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office Web site at http://doi.ppr.ky.gov/kentucky/.

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: June 20, 2007
FILED WITH LRC: June 29, 2007 at noon
CONTACT PERSON: Melea Rivera, Health Policy Specialist II, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of insurers participating in the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program, qualified health benefit plans, the disclosure relating to the Health Insurance Premium Payment (HIPP) Program as authorized under 42 U.S.C. sec 1396e and ICARE Program, data reporting, and annual review by the Office of Insurance. Additionally, this administrative regulation establishes the form to be used by insurers for monthly and annual reporting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements of ICARE Program participating insurers, a process for designation of qualified health benefit plans, the manner and content of required HIPP and ICARE Program disclosures, the form and content of monthly and annual reports, and the annual review by the Office. This administrative regulation is also necessary to clarify the provisions of 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, to prevent differing interpretations among health insurers in the small group market.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." 2006 Ky. Acts 252, Part XXIII, sec. 8 requires the Office in coordination with the Cabinet for Health and Family Services to establish the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S C. sec 1396e and ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines terms and establishes standards for the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S.C. sec 1396e and the ICARE Program, as required under 2006 Ky. Acts 252, Part XXIII, sec. 8. Additionally this administrative regulation establishes the requirements for qualified health benefit plans, data reporting, ICARE Program participating insurers and annual review pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment removes insurer requirements relating to designating an existing product as a qualified health benefit plan, makes conforming or technical changes to the regulation, and establishes a future effective date for these changes.

(b) The necessity of the amendment to this administrative regulation: In order to limit exposure to the high cost of health care in this state, protect human health by offering more affordable health insurance coverage for employees of small group employers in Kentucky, and remove some of the barriers to ICARE Program eligibility, it is necessary to promulgate this emergency regulation and clarify requirements for enrollment in this program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304 2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." 2006 Ky Acts 252, Part XXIII, sec. 8 requires the Office in coordination with the Cabinet for Health and Family Services to establish the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S.C. sec 1396e and ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment changes an administrative guideline of the ICARE Program by deeming all previously approved health benefit plans approved for marketing in the small group or employer-organized association markets as qualified health benefit plans and responding to recommendations received during the first few months of the ICARE Program's operation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will directly affect twelve (12) insurers offering health benefit plans in the small group and employer-organized association markets. The regulation will also affect approximately 4,000 small business employers with 20,000 employees that may be eligible for the ICARE Program.

(4) Provide an assessment of how the above group or groups

will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The twelve (12) insurers that offer health insurance coverage in the small group and employer-organized association markets will no longer be required to submit plans to be designated as qualified health benefit plans since all health benefit plans marketed to small groups and employer-organized associations will be deemed ICARE qualified plans. This may increase the number of employers who qualify for the ICARE Program because all health benefit plans offered in the small group and employer-organized association market will be deemed ICARE qualified plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not add additional costs relating to an insurer's routine operating expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers will be in compliance with 2006 Ky. Acts 252, Part XXIII, secs 1 through 8 and this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Preliminary estimates of administrative costs of the ICARE Program are projected to be $145,670 for fiscal year 2006-2007 for the Office of Insurance.

(b) On a continuing basis: Preliminary estimates of administrative costs of the ICARE Program are projected to be $161,550 for fiscal year 2007-2008 for the Office of Insurance. A total of $20,000,000 has been allocated from the General Fund for the ICARE Program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance. A total of $20,000,000 has been allocated from the General Fund for the ICARE Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in Office of Insurance fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly increase any fees charged by the Office of Insurance.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all insurers offering a health benefit plan in the small group market.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation relating to the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program. The Kentucky Office of Insurance is the only state or local government impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2006 Ky. Acts ch. 252, Part XXIII, sec. 8 requires the Office to establish by administrative regulation the manner and content of a disclosure by insurers, offering health insurance coverage in the small group and employer-organized association markets, relating to availability of the Health Insurance Purchasing Program as authorized under 42 U.S C. sec 1396e and the ICARE Program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance has estimated the costs of administering this administrative regulation to be $145,670 for the fiscal year 2006-2007.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance has estimated the costs of administering this administrative regulation for subsequent fiscal year to be $161,550.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation:

STATEMENT OF EMERGENCY
907 KAR 1:015E

This emergency administrative regulation is being promulgated to clarify that reimbursement for designated services and supplies shall be included in a flat rate, rather than cost settled, if the service or supply appears on a claim with a line item that is reimbursed via a flat rate. This action must be taken on an emergency basis to streamline the reimbursement process, thereby assuring the continued viability of the Medicaid Program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Emergency Amendment)

907 KAR 1:015E. Payments for <u>outpatient</u> hospital [~~outpatient~~] services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.2, 440.20(a)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.637, 42 U.S.C. 1396a, 1396b, 1396d[~~, EO 2004-726~~]

EFFECTIVE: July 12, 2007

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for [~~hospital~~] outpatient <u>hospital</u> services.

Section 1. Definitions. (1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(2) "Current procedural terminology code" or "CPT code" means a code used for the reporting of medical services or procedures using the current procedural terminology developed by the American Medical Association.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.

(5) "Level 1 service" means a services [~~services~~] billed using CPT code 99281.

(6) "Level 2 service" means a services [~~services~~] billed using CPT code [~~codes~~] 99282 or 99283.

(7) "Level 3 service" means a services [~~services~~] billed using CPT code [~~codes~~] 99284, 99285, 99291, or 99292.

(8) "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, Part III, Page 12 column 3, line 27 of the cost report by the charges reported on column 3, line 20 of the same schedule.

(9) "Revenue code" means a provider-assigned revenue code for each cost center for which a separate charge is billed.

(10) "Triage" means a medical screening and assessment billed using revenue code 451.

Section 2. Outpatient Hospital Service Reimbursement [~~Services~~]. (1) Except for a critical access hospital, [~~for services provided on or after August 4, 2003,~~] the Department for Medicaid Services shall reimburse a participating in-state hospital for an outpatient service [~~outpatient services~~] in accordance with this subsection.

(a) For the following procedures, the rates shall be as follows:

1. Cardiac catheterization lab:

a. Unilateral - $1,478; or

b. Bilateral - $1,770;

2. Computed tomography scan - $479,

3. Lithotripsy - $3,737;

4. Magnetic resonance imaging - $593,

5. Observation room - $458; and

6. Ultrasound - $177.

(b) If multiple services listed in paragraph (a) of this subsection are provided, each service shall receive the corresponding rate established in paragraph (a) of this subsection.

(c) The department shall utilize the 1996 Medicare ambulatory surgical center groups as published in the Federal Register on October 1st of each year to reimburse for an outpatient surgery. The following chart establishes the reimbursement rate for each corresponding surgical group:

Ambulatory Surgical Center Group	Reimbursement Rate
Group 1	$397
Group 2	$534
Group 3	$610
Group 4	$753
Group 5	$858
Group 6	$1,016
Group 7	$1,191
Group 8	$1,191

(d) Reimbursement for an outpatient surgery which does not have a surgical group rate shall be at a facility-specific outpatient cost-to-charge ratio.

(e) For multiple surgeries provided to the same recipient on the same day, only the surgery with the highest reimbursement rate established in paragraph (c) of this subsection, shall be paid.

(f) Except for the services listed in paragraph (g) of this subsection, all other services provided to the same recipient on the same day shall be reimbursed in accordance with paragraphs (a), (b), (c), (d), and (e) of this subsection.

(g) The following shall be reimbursed on an interim basis at a facility-specific outpatient cost-to-charge ratio for the following revenue codes:

Service	Revenue Code
Pharmacy	250, 251, 252, 254, 255, 258, 260, 261, 634, 635, 636
X-ray	320, 321, 322, 323, 324, 342, 400, 403, 920
Supplies	270, 271, 272, 274, 275, 621, 622, 623
EKG/ECG and Therapeutic Services	410, 412, 413, 420, 421, 422, 423, 424, 440, 441, 442, 443, 460, 470, 471, 472, 480, 482, 510, 512, 516, 517, 730, 731, 732, 740, 901, 922, 940, 942, 943
Room and Miscellaneous	280, 290, 370, 371, 372, 374, 700, 710, 750, 761, 890, 891, 892, 893, 921
Dialysis	821, 831, 841
Chemotherapy	330, 331, 332, 333, 334, 335

(h) Except as established in paragraph (1) of this subsection, a service [~~Services~~] reimbursed in accordance with paragraph (g) of this subsection shall be settled to cost at year end.

(i) If a service or supply listed in paragraph (g) of this subsection appears on a claim with a line item reimbursed via a flat rate, reimbursement for the supply or services:

1. Shall not be cost settled; and

2. Shall be included in the flat rate.

(2) Except for pharmacy services billed using revenue codes 250, 251, 252, 254, 255, 258, 260, 261, 634, 634, or 636, medical or surgical supplies billed using revenue codes 270-275, and triage billed using revenue code 451, a hospital shall include all applicable CPT and HCPCS codes on a claim.

(3) Except for services listed in subsection (1)(g) of this section, [~~beginning August 4, 2003,~~] an out-of-state hospital providing outpatient services shall be reimbursed in accordance with subsection (1) of this section.

(4) Reimbursement for an outpatient hospital service provided by an out-of-state hospital shall be as follows:

(a) Reimbursement for a service or supply listed in subsection (1)(g) of this section appearing on a claim with a line item reimbursed via a flat rate shall be included in the flat rate;

(b) Except for a service or supply appearing on a claim with a line item reimbursed via a flat rate, a service [~~Services~~] listed in subsection (1)(g) of this section provided by an out-of-state hospital shall be reimbursed by multiplying the average outpatient cost-to-charge ratio of in-state hospitals, excluding critical access hospitals, by billed charges.

(5)(a) An outpatient hospital laboratory service shall be reimbursed at the Medicare-established technical component rate in accordance with 907 KAR 1:029.

(b) An outpatient hospital laboratory service with no established Medicare rate shall be reimbursed by multiplying a facility-specific outpatient cost-to-charge ratio by billed charges.

(c) There shall be no cost setting.

(6) A critical access hospital shall be reimbursed on an interim basis:

(a) By multiplying charges by the lesser of.

1. The Medicare cost-to-charge ratio issued by the Medicare fiscal intermediary in effect at the time; or

2. The Medicaid outpatient cost-to-charge ratio;

(b) For a laboratory service in accordance with the Medicare fee schedule; and

(c) With a settlement to cost at the end of the year.

(7) A hospital providing outpatient services shall be required to submit a cost report within five (5) months after a hospital's fiscal year end.

(8) Failure to provide a cost report within the timeframe established in subsection (7) of this section shall result in a suspension of future payment until the cost report is received by the department.

(9) If a cost report indicates payment is due, a provider shall

remit payment in full or a request for a payment plan with the cost report.

(10) If a cost report indicates a payment is due and a hospital fails to remit a payment or request for a payment plan, the department shall suspend future payment to the hospital.

(11) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(12) If it is determined that an additional payment is due after a final determination of cost has been made by the department, the additional payment shall be due sixty (60) days after notification.

(13) If a hospital fails to submit an additional payment in accordance with subsection (12) of this section, the department shall suspend future payment to the hospital.

Section 3. Supplemental Payments. (1) In addition to a payment received in accordance with Section 2 of this administrative regulation, a nonstate government hospital, as defined in 42 C.F.R. 447.321(2), whose county has entered into an intergovernmental agreement with the Commonwealth shall receive a quarterly supplemental payment in an amount equal to the difference between the payments made in accordance with Sections 2 and 4 of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.321.

(2) A payment made under this section shall:

(a) Not be subject to the cost-settlement provisions established in Section 2 of this administrative regulation; and

(b) Apply to a service provided on or after April 2, 2001.

Section 4. In-state and Out-of-state Emergency Room Services Reimbursement [~~Services~~]. (1) Services provided in an emergency room shall be reimbursed as follows:

(a) The triage service reimbursement rate shall be twenty (20) dollars;

(b) The level 1 service reimbursement rate shall be eighty-two (82) dollars;

(c) The level 2 service reimbursement rate shall be $164; and

(d) The level 3 service reimbursement rate shall be $264.

(2) In addition to the rate paid for services listed in subsection (1) of this section, the following shall be paid at the following rates:

(a) Cardiac catheterization lab:

1. Unilateral - $1,478; or

2. Bilateral - $1,770;

(b) Computed tomography scan - $479;

(c) Lithotripsy - $3,737;

(d) Magnetic resonance imaging - $593;

(e) Observation room - $458; and

(f) Ultrasound - $177.

(3) If multiple services listed in subsection (2) of this section are provided, each service shall receive the corresponding rate established in subsection (2) of this section.

(4) Except as listed in subsection (5) of this section, a separate payment shall not be made for the services or supplies listed in Section 2(1)(g) of this administrative regulation.

(5) A thrombolytic agent shall be reimbursed at the hospital's acquisition cost.

(6) A service provided in an emergency room of a critical access hospital shall be reimbursed in accordance with Section 2(6) of this administrative regulation.

Section 5. Appeals. A hospital may appeal a decision as permitted by 907 KAR 1:671.

Section 6. Cost Report Requirements. (1) An in-state hospital participating in the Medicaid Program shall submit to the department a copy of the Medicare cost report it submits to CMS, the Supplemental Medicaid Schedule KMAP-1, and the Supplemental Medicaid Schedule KMAP-4 as follows:

(a) A cost report shall be submitted:

1. For the fiscal year used by the hospital, and

2. Within five (5) months after the close of the hospital's fiscal year; and

(b) Except as follows, the department shall not grant a cost report submittal extension:

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report; or

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) The cost report submitted by a hospital shall be subject to audit and review.

(4) An in-state hospital shall submit a final Medicare-audited cost report upon completion by the Medicare intermediary to the department.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supplemental Worksheet E-3, Part III, Page 12", November 1992 edition";

(b) "Supplemental Medicaid Schedule KMAP-1", January 2007 edition; and

(c) "Supplemental Medicaid Schedule KMAP-4", January 2007 edition [~~is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for the provision of outpatient services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse hospitals for the provision of outpatient services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that reimbursement for the services and supplies identified in Section 2(1)(g) of this administrative regulation shall be included in a flat rate (not cost settled) if the service or supply appears on a claim with a line item that is reimbursed via a flat rate. This amendment further establishes cost reporting requirements for in-state hospitals.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to streamline the reimbursement process for services and supplies identified in Section 2(1)(g) of this administrative regulation, thereby helping to maintain the viability of the Medicaid Program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing outpatient procedures reimbursed via a flat rate rather than via a cost basis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment assists in the effective administration of the authorizing statutes by establishing outpatient procedures reimbursed via a flat rate rather than via a cost basis.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All hospitals providing outpatient services are affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Regulated entities will not have to take any action to comply with the amendment as the amendment alters outpatient hospital reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Regulated entities will not have to take any action to comply with the amendment as the amendment alters outpatient hospital reimbursement.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: While implementation of the amendment to this administrative regulation could improve cash flow, the fiscal impact is indeterminable.

(b) On a continuing basis: While implementation of the amendment to this administrative regulation could improve cash flow, the fiscal impact is indeterminable.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funds or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All hospitals providing outpatient services are affected by this amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 440.20, 42 C.F.R. 447.321

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? While implementation of the amendment to this administrative regulation could improve cash flow, the fiscal impact is indeterminable.

(d) How much will it cost to administer this program for subsequent years? While implementation of the amendment to this administrative regulation could improve cash flow, the fiscal impact is indeterminable.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

STATEMENT OF EMERGENCY
907 KAR 1:145E

This emergency administrative regulation is being promulgated to establish the consumer directed option (CDO) program, created by KRS 205.5606, for supports for community living (SCL) service recipients. This initiative allows individuals to choose their providers of nonmedical waiver services resulting in greater freedom of choice, flexibility, and control over their supports and services. Members can choose to direct all or some of their non-medical waiver services. This action must be taken on an emergency basis to meet a deadline for implementation of a requirement established by state law. This emergency administrative regulation differs from the emergency administrative regulation governing the same subject that was submitted to the Legislative Research Commission on April 4, 2006 in that it implements a consumer directed option pursuant to KRS 205.5606, increases the requirements for background checks, and defines reporting requirements for deaths of SCL service recipients. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation differs from the emergency administrative regulation regarding Class II and Class III incident reporting provisions.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Emergency Amendment)

907 KAR 1:145E. Supports for community living services for an individual with mental retardation or a developmental disability.

RELATES TO: KRS 205.520, 205 5605, 205.5606, 205 5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A 030(2), 194A.050(1), 205.520(3), 205 6317

EFFECTIVE: July 12, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity

presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community based services waivers. This administrative regulation establishes the coverage provisions relating to home and community-based services provided to an individual with mental retardation or a developmental disability as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability, including a consumer directed option pursuant to KRS 205.5606.

Section 1. Definitions. (1) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351 [~~MAP-351B~~];

(b) Submitted to the department;

1. For a level of care determination; and

2. [~~(c) Conducted prior to an individual's initial admission to the waiver and at least~~] Annually thereafter.

(2) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an SCL recipient.

(3) "Behavior support specialist" means an individual who has a master's degree with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming.

(4) "Blended services" means a nonduplicative combination of SCL waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 5 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(5) "Budget allowance" is defined by KRS 205.5605(1).

(6) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS 319.053 or 319.056.

(7) "Consumer" is defined by KRS 205.5605(2).

(8) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waivers that allow recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(9) "Covered services and supports" is defined by KRS 205.5605(3).

(10) [~~(6)~~] "DCBS" means the Department for Community Based Services.

(11) [~~(6)~~] "Department" means the Department for Medicaid Services or its designee.

(12) [~~(7)~~] "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22);

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable to mental retardation or related conditions that:

1. Result in impairment of general intellectual functioning and adaptive behavior similar to that of a person with mental retardation; and

2. Are a direct result of, or are influenced by, the person's substantial cognitive deficits

(13) [~~(8)~~] "DMHMR" means the Department for Mental Health and Mental Retardation Services.

(14) [~~(9)~~] "DMR" means the Division of Mental Retardation in the Department for Mental Health and Mental Retardation Services.

(15) [~~(10)~~] "Electronic signature" is defined in KRS 369.102.

(16) [~~(11)~~] "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less;

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period; or

(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(17) [~~(12)~~] "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.

(18) [~~(13)~~] "ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(19) [~~(14) "Individual support plan" or "ISP" means a written individualized plan developed by an SCL recipient, or an SCL recipient's legal representative, support coordinator, or others designated by an SCL recipient.~~

~~(15)~~] "Level of care determination" means a determination by the department that an individual meets low-intensity or high-intensity patient status criteria in accordance with 907 KAR 1:022.

(20) [~~(16)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2) [~~means a person licensed pursuant to KRS 335.300 to 335.399~~].

(21) [~~(17)~~] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3) [~~means a person licensed pursuant to KRS 335.500 to 335.599~~].

(22) [~~(18)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(23) [~~(19)~~] "Mental retardation" means that a person has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of approximately seventy (70) or below;

(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication,
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health, and safety; and

(d) Had an onset before eighteen (18) years of age.

(24) [~~(20)~~] "Occupational therapist" means an individual who is licensed as defined in accordance with KRS 319A.010.

(25) "Occupational therapy assistant" is defined in KRS 319A.010(4).

(26) "Patient liability" means the financial amount an individual is required to contribute towards the cost of care in order to maintain Medicaid eligibility.

(27) [~~(21)~~] "Physical therapist" means an individual who is licensed as defined in accordance with KRS 327.010.

(28) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(29) "Plan of Care" or "POC" means a written individualized plan developed by:

(a) An SCL recipient or an SCL recipient's legal representative;

(b) Case manager or support broker; and

(c) Other designated by the SCL recipient if the SCL recipient designates any other.

(30) [~~(22)~~] "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(31) [~~(23)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(32) [~~(24) "Qualified mental retardation professional" or "QMRP" means an individual who has at least one (1) year of experience working with persons with mental retardation or develop-~~

~~mental disabilities and meets the professional criteria in accordance with 42 C.F.R. 483.430.~~

~~(25)~~] "Registered nurse" or "RN" means a person who is currently licensed as defined in KRS 314.011(5), and who has one (1) year or more experience as a professional nurse.

(33) Representative is defined in KRS 205.5605(6).

(34) "SCL mental retardation professional" or "SCL MRP" means an individual who has at least one (1) year of experience working with persons with mental retardation or developmental disabilities and:

(a) Is a doctor of medicine or osteopathy;

(b) Is a registered nurse; or

(c) Holds at least a bachelor's degree in a human services field including sociology, special education, rehabilitation counseling, or psychology.

(35) [~~(26)~~] "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(36) [~~(27)~~] "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(37) [~~(28)~~] "Social worker" means an individual licensed by the Kentucky Board of Social Work under KRS 335.080, 335.090, or 335.100.

(38) [~~(29)~~] "Speech therapist" means an individual who is licensed in accordance with KRS 334A.030.

(39) "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance and support to a consumer; and

(b) Assist the consumer in any other aspects of CDO.

(40) [~~(30)~~] "Supports for community living" or "SCL" means home and community-based waiver services for an individual with mental retardation or a developmental disability.

(41) "Support spending plan" means a plan for a consumer that identifies:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance

Section 2. SCL Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:

(a) Be placed on the SCL waiting list in accordance with Section 6 of this administrative regulation;

(b) Receive notification of potential SCL funding in accordance with Section 6 of this administrative regulation;

(c) Meet ICF-MR-DD patient status requirements established in 907 KAR 1:022;

(d) Meet Medicaid eligibility requirements established in 907 KAR 1:605;

(e) Submit an application packet to the department [~~DMHMR~~] which shall contain:

1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;

2. [~~The Freedom of Choice of Home and Community Based Waiver for Persons with MR-DD Service Providers Form, MAP-4102;~~

~~3.~~] The MAP-351 [~~MAP-351B~~] Assessment Form;

3. [~~4. The level of care determination;~~

~~5.~~] The results of a physical examination that was conducted within the last twelve (12) months;

4. [~~6.~~] A MAP-10, statement of the need for long-term care services, which shall be signed and dated by a physician or an SCL MRP [~~a QMRP~~] and be less than one (1) year old;

5. [~~7.~~] The results of a psychological examination completed by a licensed psychologist or psychologist with autonomous functioning;

6. [~~8.~~] A social case history which is less than one (1) year old;

7. [~~9.~~] A projection of the needed supports and a preliminary MAP-109 [~~MAP-145-SCL~~] plan of care for meeting those needs; and

8. [~~10.~~] A MAP-24C documenting an individual's status change; and

9. A copy of the letter notifying the SCL recipient of an SCL funding allocation; and

(f) Receive notification of an admission packet approval from the department.

(2) To maintain eligibility as an SCL recipient:

(a) An individual shall be administered an NC-SNAP assessment by the department in accordance with 907 KAR 1:155;

(b) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(c) An ICF-MR-DD level of care determination shall be performed by the department at least once every twelve (12) months.[~~; and~~

~~(d) An SCL provider shall notify the local DCBS office and the department on a MAP-24C form if an SCL recipient is:~~

~~1. Terminated from the SCL waiver program;~~

~~2. Admitted to an ICF-MR-DD facility; or~~

~~3. Transferred to another Medicaid waiver program.~~]

(3) An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or is an inpatient of an ICF-MR-DD or other facility.

(4) The department may exclude from receiving an SCL waiver service an individual for whom the aggregate cost of SCL waiver services would reasonably be expected to exceed the cost of ICF-MR-DD services.

(5) Involuntary termination and loss of an SCL waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to access an SCL waiver service within sixty (60) days of notification of potential funding without good cause shown.

1. The individual or legal representative shall have the burden of documenting good cause, including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(b) An SCL recipient or legal representative fails to access the required service as outlined in the plan of care [~~ISP~~] for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or

(d) An SCL recipient does not meet ICF-MR-DD patient status criteria.

(6) Involuntary termination of a service to an SCL recipient by an SCL provider shall require:

(a) Simultaneous notice to the SCL recipient or legal representative and the case manager or support broker at least twenty (20) days prior to the effective date of the action, which shall include.

1. A statement of the intended action;

2. The basis for the intended action;
3. The authority by which the action is taken; and
4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) Submittal of a MAP-24C to the department and to DMR at the time [DMR-001 to DMHMR at least twenty (20) days prior to the effective date] of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;
2. Provide assistance to the SCL recipient in making contact with another SCL provider;
3. Arrange transportation for a requested visit to an SCL provider site;
4. Provide a copy of pertinent information to the SCL recipient or legal representative;
5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured;
6. Continue to provide supports until alternative services or another placement is secured; and
7. Provide assistance to ensure a safe and effective service transition.

(7) Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider, to the department and to DMR [and to DMHMR].

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Non-CDO Provider Participation. (1) In order to provide a non-CDO [an] SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:

(a) Be certified by the department prior to the initiation of the service;

(b) Be recertified at least annually by the department; and

(c) Have a main office within the Commonwealth of Kentucky.

(2) An SCL provider shall comply with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:673 and 902 KAR 20.078.

(3) An SCL provider shall have a governing body that shall:

(a) Be a legally constituted entity within the Commonwealth of Kentucky;

(b) Not contain a majority of owners;

(c) Be responsible for the overall operation of the organization that shall include:

1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an SCL recipient supported by the agency;
2. Appointing and annually evaluating the executive director;
3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;
4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and
5. Orienting a new member of the governing body to the operation of the organization, including the roles and responsibilities of board members.

(4) An SCL provider shall:

(a) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff member of the SCL provider who has one (1) of the following blood relationships to the SCL recipient.

1. Child;
2. Parent;
3. Sibling; or
4. Spouse,

(b) Not enroll an SCL recipient for whom they cannot meet the support needs;

(c) Have and follow written criteria that comply with this administrative regulation for determining the eligibility of an individual for admission to services; and

(d) Document any denial for a service and the reason for the denial, and identify resources necessary to successfully support the denied SCL recipient in the community.

(5) An SCL provider shall maintain documentation of its operations which shall include:

(a) An annual review of written policy and procedures;
(b) A written description of available SCL waiver services;
(c) A current table of organization;
(d) A memorandum of understanding with an SCL case management provider with whom they share plans of care [individual support plans];
(e) Information regarding satisfaction of an SCL recipient and the utilization of that information;
(f) A quality improvement program; and
(g) Documentation of achievement of outcomes based on best practice standards as approved by the department.

(6) An SCL provider shall:

(a) Maintain accurate fiscal information which shall include documentation of revenue and expenses;

(b) Maintain a written schedule of policy relevant to rates and charges that shall be available to any individual upon request;

(c) Meet the following requirements if responsible for the management of SCL recipient funds:

1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;
2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and
3. The SCL recipient or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.

(7) An SCL provider shall have a written statement of its mission and values, which shall:

(a) Support empowerment and informed decision-making;
(b) Support and assist people to remain connected to natural support networks, and
(c) Promote dignity and self-worth.

(8) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal representative of an SCL recipient which shall:

(a) Require a timely response to an inquiry;
(b) Require the opportunity for interaction by direct care staff;
(c) Require prompt notification of any unusual occurrence;
(d) Require visitation to the SCL recipient at a reasonable time, without prior notice and with due regard for the SCL recipient's right of privacy;
(e) Require involvement in decision making regarding the selection and direction of the service provided; and
(f) Consider the cultural, educational, language and socioeconomic characteristics of the family being supported.

(9) An SCL provider shall ensure the rights of an SCL recipient by:

(a) Making available a description of the rights and the means by which they can be exercised and supported which shall include:

1. The right to time, space, and opportunity for personal privacy,
2. The right to communicate, associate and meet privately with the person of choice;
3. The right to send and receive unopened mail;
4. The right to retain and use personal possessions including clothing and grooming articles; and
5. The right to private, accessible use of the telephone;

(b) Having a grievance and appeals system that includes an external mechanism for review of complaints; and

(c) Complying with the Americans with Disabilities Act (28 C.F.R. 35).

(10)(a) An SCL provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that:

1. A covered service is provided; or
2. The recipient turns twenty-one (21), if the recipient is under the age of twenty-one (21);

(b) All records and incident reports shall be made available to the:

1. [~~The~~] department; ,
2. DMHMR or its designee;
3. [~~The Commonwealth of Kentucky,~~] Cabinet for Health and Family Services, Office of Inspector General or its designee;
4. [~~The United States~~] General Accounting Office or its designee;
5. [~~The Commonwealth of Kentucky,~~] Office of the Auditor of Public Accounts or its designee;
6. [~~The Commonwealth of Kentucky,~~] Office of the Attorney General or its designee;
7. DCBS [~~The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services~~], or
8. [~~The~~] Centers for Medicare and Medicaid Services.

(11) An SCL provider shall cooperate with monitoring visits from monitoring agents.

(12) An SCL provider shall maintain a record for each SCL recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error that is initialed and dated, and

(d) Contain no blank lines in between each entry.

(13) A record of each SCL recipient who is served shall:

(a) Contain all information necessary for the delivery of the SCL recipient's services;

(b) Be cumulative;

(c) Be readily available;

(d) Contain documentation which shall meet the requirements of Section 4 of this administrative regulation,

(e) Contain the following specific information:

1. The SCL recipient's name, Social Security number and Medicaid identification number (MAID);

2 The intake or face sheet;

3. The MAP-351 [~~MAP-351B~~] Assessment form completed at least annually;

4. The current plan of care [~~ISP~~];

5. The training objective for any support which facilitates achievement of the SCL recipient's chosen outcomes;

6. A list containing emergency contact telephone numbers;

7. The SCL recipient's history of allergies with appropriate allergy alerts for severe allergies;

8. The SCL recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

9. A recognizable photograph of the SCL recipient;

10. Legally-adequate consent, updated annually, for the provision of services or other treatment requiring emergency attention and shall be located at each service site;

11. The individual educational plan (IEP) or individual family service plan (IFSP), if applicable;

12. The SCL recipient's social history updated at least annually;

13. The results of an annual physical exam;

14. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;

15. Psychological evaluation;

16. [~~Original and~~] Current level of care certification; and

17. The MAP-552K, Department for Community Based Services Notice of Availability for Long Term Care/Waiver Agency/Hospice Form in the case management and residential record; [~~and~~

~~18. A copy of the approved SCL-1 form,~~]

(f) Be maintained by the provider in a manner to ensure the confidentiality of the SCL recipient's record and other personal information and to allow the SCL recipient or legal representative to determine when to share the information as provided by law;

(g) Have the safety from loss, destruction or use by an unauthorized person ensured by the provider;

(h) Be available to the SCL recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record; and

(i) Have a corresponding legend which the provider shall make readily accessible.

(14) An SCL provider shall:

(a)1. Ensure that each staff and volunteer performing direct care or a supervisory function[~~, prior to providing direct care to a recipient,~~] has tested negatively for tuberculosis within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; and

2. Maintain documentation of each staff person's and if a volunteer performs direct care or a supervisory function, the volunteer's negative tuberculosis test;

(b) Have written personnel guidelines for each employee to include:

1. Salary range;
2. Vacation and leave procedures;
3. Health insurance;
4. Retirement benefits,
5. Opportunity for continuing education; and
6. Grievance procedures;

(c) Provide a written job description for each staff person which describes the employee's duties and responsibilities,

(d) Annually review each job description;

(e)[~~1.~~] For each potential employee[~~, prior to employment,~~] obtain:

1. Prior to employment, the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment.

2. Within fourteen (14) days of the date of hire, the results of a central registry check as described in 922 KAR 1:470, and

3. Prior to employment, the results of a nurse aide abuse registry check as described in 906 KAR 1:100.

(f) Annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;

(g) For a volunteer expected to perform direct care or a supervisory function obtain:

1. Prior to the date the individual began serving as a volunteer, the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;

2. Within fourteen (14) days of the date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to the date the individual began serving as a volunteer, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;

(h) Annually, for twenty-five (25) percent of volunteers randomly selected, performing direct care staff or a supervisory function, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering.

(i) Not employ or place an individual as a volunteer who:

1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);

2. Has a prior felony conviction;

3 Has a conviction of abuse or sale of illegal drugs;

4 Has a conviction of abuse, neglect or exploitation;

5 Has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; or

6. Is listed on the nurse aide abuse registry;

(j) Not employ or place an individual as a volunteer to transport an SCL recipient if the individual has a driving under the influence (DUI) conviction during the past year; and

(k) [~~a criminal record check from the Administrative Office of the Courts in each state in which the individual resided or worked in during the previous year; or~~

~~2. For an employee who resided or worked outside the Commonwealth during the previous year, obtain a criminal record check from the Administrative Office of the Courts or the state's designated equivalent agency;~~

~~(f) For twenty-five (25) percent of employees, randomly selected, obtain a criminal record check from the Administrative Office of the Courts, or other states designated equivalent annually for each state in which the individual resided or worked in during the previous year;~~

~~(g) Obtain a criminal record check from the Administrative Office of the Courts prior to placement as a volunteer performing direct care staff or a supervisory function, and twenty-five (25) percent of volunteers, randomly selected, annually thereafter if the individual is placed;~~

~~(h) Not employ or place an individual as a volunteer with a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction, and~~

~~(i)~~] Evaluate the performance and competency of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter.

(15) An SCL provider shall have:

(a) [~~Have~~] An executive director who:

1.a. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; or

b. Is a registered nurse; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability;

(b) [~~Have~~] A program director of the SCL waiver program who:

1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with mental retardation or developmental disabilities;

2. Is an SCL MRP [~~a QMRP~~], and

3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met;

(c) [~~Have~~] Adequate direct-contact staff who:

1 a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

b.(i) Is at least twenty-one (21) years old; and

(ii) Is able to adequately communicate with recipients and staff;

2. Has a valid Social Security number or valid work permit if not a U S. citizen;

3. Can understand and carry out instructions; and

4. Has ability to keep simple records; and

(d) [~~Has~~] Adequate supervisory staff who:

1.a (i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED, or

b.(i) Is at least twenty-one (21) years old; and

(ii) Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability;

2. Is able to adequately communicate with the recipients, staff, and family members;

3. Has a valid Social Security number or valid work permit if not a U.S. citizen; and

4. Has ability to perform required record keeping.

(16) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:

(a) Ensuring the health, safety and welfare of the SCL recipient;

(b) Maintenance of sanitary conditions;

(c) Ensuring each site operated by the provider is equipped with:

1. An operational smoke detector placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(d) Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 120 degrees Fahrenheit;

(e) Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:

1. Safe storage and use; and

2. That firearms and ammunition are permitted:

a. Only in a family [~~care~~] home provider or an adult foster care home; and

b. Only if stored separately and under double lock;

(f) Establishing [~~Establish~~] written procedures concerning the safe storage of common household items;

(g) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(h) Unless the employee is a licensed or registered nurse, ensuring that staff administering medication:

1. Have specific training provided by a licensed medical professional per a DMR-approved curriculum and documented competency on medication administration, medication cause and effect and proper administration and storage of medication; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication and dosage and accompany and be administered to an SCL recipient at a program site other than his or her residence if necessary; and

d. Be documented on a medication administration form and properly disposed of, if discontinued, and

(i) Policy and procedures for ongoing monitoring of medication administration.

(17) An SCL provider shall establish and follow written guidelines for handling an emergency or a disaster which shall.

(a) Be readily accessible on site;

(b) Include instruction for notification procedures and the use of alarm and signal systems to alert an SCL recipient according to his or her disability;

(c) Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and scheduled to include a time when an SCL recipient is asleep; and

(d) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An SCL provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization, and practice of the agency;

(b) Provide or arrange for the provision of competency-based training to each employee to teach and enhance skills related to the performance of their duties,

(c) Require documentation of all training which shall include:

1. The type of training provided:

2. The name and title of the trainer;

3 The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(d) Ensure that each employee prior to independent functioning, completes training which shall include:

1. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

2. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

3. Crisis prevention and management;

4. Identification and prevention of abuse, neglect, and exploitation;

5. Rights of individuals with disabilities; and

6. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(e) Ensure that each employee that will be administering medications, prior to independent functioning, completes training which shall include;

1 Medication administration training per cabinet-approved curriculum;

2. Medications and seizures;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited

organization;

4. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

5. Crisis prevention and management;

6. Identification and prevention of abuse, neglect, and exploitation;

7. Rights of individuals with disabilities; and

8. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(f) Ensure that all employees complete core training, consistent with a DMHMR-approved curriculum, no later than six (6) months from the date of employment, which shall include:

1. Values, attitudes, and stereotypes;

2. Building community inclusion;

3. Person-centered planning;

4. Positive behavior support;

5. Human sexuality and persons with disabilities;

6. Self determination; and

7. Strategies for successful teaching;

(g) Not be required to receive the training specified in this section if the provider is:

1. An occupational therapist providing occupational therapy;

2. A physical therapist providing physical therapy;

3. A psychologist or psychologist with autonomous functioning providing psychological services; or

4. A speech therapist providing speech therapy; [~~and~~]

(h) Ensure that an individual volunteer performing a direct care staff or a supervisory function receives training prior to working independently, which shall include:

1. Orientation to the agency;

2. Individualized instruction on the needs of the SCL recipient to whom the volunteer provides support;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Cardiopulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

(i) On or after the first day of the month following the effective date of this emergency administrative regulation, ensure that each new case manager hired complete DMR-approved case management training within:

1. The first three (3) months from the date of hire; or

2. As soon as possible following the third month of hire if the case manager is unable to complete training within the first three (3) months due to unavailability of the training

Section 4. Non-CDO Covered Services. (1) A non-CDO SCL waiver service shall:

(a) Be prior authorized by the department; and

(b) Be provided pursuant to the plan of care [~~individual support plan~~].

(2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:

(a) Adult day training which shall:

1. Support the SCL recipient to participate in daily meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a nonresidential or community setting that may;

a. Be a fixed location; or

b. Occur in public venues.

4. Not be diversional in nature;

5. Be provided as on-site services which shall:

a. Include facility-based services provided on a regularly-scheduled basis;

b. Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or

c. Prepare the participant for transition from school to work or adult support services;

6. Be provided as off-site services which:

a. Shall include services provided in a variety of community settings;

b. Shall provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Shall be designed to result in increased ability to access community resources without paid supports;

d. Shall provide the opportunity for the participant to be involved with other members of the general population;

e. May be provided as an enclave or group approach to training in which participants work as a group or dispersed individually throughout an integrated work setting with people without disabilities;

f. May be provided as a mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; and

g. May be provided as entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

7. Ensure that any recipient performing productive work that benefits the organization be paid commensurate with compensation to members of the general work force doing similar work;

8. Require that a provider conduct an orientation informing the recipient of supported employment and other competitive opportunities in the community at least annually;

9. Be provided at a time mutually agreed to by the recipient and provider;

10.a. Be provided to recipients age twenty-two (22) or older;

b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services;

11. Be documented by:

a. A time and attendance record which shall include

(i) The date of the service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary staff note which shall include:

(i) The month, day, and year for the time period covered by each note written;

(ii) [~~Progress toward outcomes identified in the ISP;~~

~~(iii)~~] Progression, regression, and maintenance toward outcomes identified in the plan of care; and

(iii) [~~(iv)~~] The signature, date of signature, and title of individual preparing the summary staff note;

12. Be limited to five (5) days per week, 255 days maximum per year;

13. Not exceed eight (8) hours per day, five (5) days [~~or forty (40) hours~~] per week; and

14. Not exceed sixteen (16) hours per day if provided in combination with community living supports or supported employment;

(b) An assessment service including a comprehensive assessment which shall:

1. Identify an SCL recipient's needs and the services that the SCL recipient or his or her family cannot manage or arrange for on his or her behalf;

2. Evaluate an SCL recipient's physical health, mental health, social supports, and environment;

3. Be requested by an individual requesting SCL services or a family or legal representative of the individual;

4. Be conducted within seven (7) calendar days of receipt of the request for assessment;

5. Include at least one (1) face-to-face contact with the SCL recipient and, if appropriate, his or her family by the assessor in the SCL recipients home; and

6. Not be reimbursable if the individual does not receive a level of care certification;

(c) A reassessment service which shall:

1. Determine the continuing need for SCL waiver services;

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures as for an assessment service;

4. Be conducted by a SCL case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

5. Not be reimbursable if conducted during a period that the SCL recipient is not covered by a valid level of care certification; and

6. Not be retroactive;

(d) Behavioral support which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the SCL recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the SCL recipient's behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded [~~precede~~] the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Be implemented by SCL provider staff in all relevant environments and activities;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;

f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

g. Reflect the use of positive approaches; and

h. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;

6. Include the monitoring of an SCL recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. The reports of an SCL provider involved in implementing the behavioral support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist who shall have:

a. A master's degree with formal graduate course work in a behavioral science; and

b. One (1) year of experience in behavioral programming,

9. Be documented by a detailed staff note which shall include.

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the behavioral specialist; and

10. Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;

(e) Case management which shall include:

1. Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;

2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;

3. Assisting an SCL recipient and the support team to develop, update, and monitor the plan of care [~~ISP~~] which shall:

a. Be initially developed within thirty (30) days of the initiation of the service using person-centered guiding principles;

b. Be updated at least annually or as changes occur;

c. Be submitted on the MAP-351 [~~MAP-351B and MAP-145 SCL forms~~]; and

d. Include any modification [~~the addendum~~] to the plan of care [~~ISP~~] and be sent to the department [~~DMHMR~~] within fourteen (14) days of the effective date that the change occurs with the SCL recipient;

4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;

5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;

6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and of any change to the selection of an SCL provider and the reason for the change,

7. Timely distribution of the plan of care [~~ISP~~], crisis prevention plan, assessment, and other documents to chosen SCL service providers;

8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;

9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:

a. Individual-specific;

b. Annually reviewed; and

c. Updated as a change occurs;

10. Assisting an SCL recipient in planning resource use and assuring protection of resources;

11. Services that are exclusive of the provision of a direct service to an SCL recipient,

12. Monthly face-to-face contact with an SCL recipient;

13. Monitoring the health, safety, and welfare of an SCL recipient;

14. Monitoring all of the supports provided to an SCL recipient;[~~:~~]

15. Notifying the local DCBS office, the department and DMR on a MAP-24C form if an SCL recipient is:

a. Terminated from the SCL Waiver Program;

b. Admitted to an ICF-MR-DD;

c. Admitted to a hospital; or

d. Transferred to another Medicaid Waiver Program;

16. Establishing a human rights committee which shall:

a. Include an:

(i) SCL recipient;

(ii) Individual not affiliated with the SCL provider; and

(iii) Individual who has knowledge and experience in rights issues;

b. Review and approve, prior to implementation and at least annually thereafter, all plans of care [~~ISPs~~] with rights restrictions;

c. Review and approve prior to implementation and at least annually thereafter, in conjunction with the SCL recipient's team, behavior support plans that include highly-restrictive procedures or contain rights restrictions; and

d. Review the use of a psychotropic medication by an SCL recipient [~~with or~~] without an Axis I diagnosis;

17. [~~16.~~] Establishing a behavior intervention committee which shall:

a. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;

b. Be separate from the human rights committee;

c. Review and approve prior to implementation and at least annually thereafter or as changes are needed, in conjunction with the SCL recipient's team, all behavior support plans; and

d. Review the use of a psychotropic medication by an SCL recipient [~~with or~~] without an Axis I diagnosis and recommend an alternative intervention if appropriate;

18. [~~17.~~] Documentation with a monthly summary note which shall include:

a. Documentation of monthly contact with each chosen SCL provider which shall include monitoring of the delivery of services and the effectiveness of the assessment of needs and plan of care;

b Documentation of monthly face-to-face contact with an SCL recipient; and

c. Progress towards outcomes identified in the plan of care

[~~ISP~~];

19. [~~18.~~] Provision by a case manager who shall:

a. Have a bachelor's degree from an accredited institution in a human services field [~~in a human service~~];

b. Be a registered nurse licensed in accordance with KRS 314.011;

c. Be a qualified social worker;

d. Be a licensed marriage and family therapist;

e. Be a professional clinical counselor;

f. Be a certified psychologist; or

g. Be a licensed psychological practitioner;

20. [~~19.~~] Supervision by a case management supervisor who shall be an SCL MRP [~~a QMRP~~]; and

21. [~~20.~~] Documentation with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care [~~ISP~~]; and

c. The signature, date of signature, and title of the individual preparing the note;

(f) Children's day habilitation which shall be:

1. The provision of support, training, and intervention in the areas of:

a. Self-care;

b. Sensory/motor development;

c. Daily living skills;

d. Communication; and

e. Adaptive and social skills;

2. Provided in a nonresidential or community setting;

3. Provided to enable the recipient to participate in and access community resources;

4. Provided to help remove or diminish common barriers to participation in typical roles in community life;

5. Provided at a time mutually agreed upon by the recipient and provider;

6. Limited to:

a. Individuals who are in school and up to sixteen (16) years of age;

b. Up to eight (8) hours per day, five (5) days per week; and

c. Up to sixteen (16) hours per day in combination with community living supports; and

7. Documented by:

a. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service, and

(iv) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly staff note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) [~~Progress toward outcomes identified in the ISP;~~

~~(iii)~~] Progression, regression, or maintenance of outcomes identified in the plan of care [~~ISP~~]; and

(iii) [~~(iv)~~] The signature, date of signature, and title of the individual preparing the summary staff note;

(g) Community living supports which shall:

1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;

2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Leisure choices;

j. Participation in community activities;

k. Therapeutic goals; or

l. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-basis;

5. Not be provided at an adult day-training or children's day-habilitation site;

6. Be documented by:

a. A time and attendance record which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service; and

(iii) The signature, date of signature and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day and year for the time period each note covers;

(ii) [~~Progress toward outcomes identified in the ISP,~~

~~(iii)~~] Progression, regression and maintenance toward outcomes identified in the plan of care [~~ISP~~]; and

(iii) [~~(iv)~~] The signature, date of signature and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment;

(h) Occupational therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression,

5. Provided by an occupational therapist or an occupational therapy assistant supervised by a licensed occupational therapist in accordance with 201 KAR 28:130; and

6 Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care [~~ISP~~];

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date of signature and title of the individual providing the service;

(i) Physical therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;

2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;

3. Training of another SCL provider on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by a physical therapist or a certified physical therapist assistant supervised by a licensed physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and

6. Documented by a detailed staff note which shall include:

a Progress made toward outcomes identified in the plan of care [~~ISP~~];

b. The date of the service;

c. Beginning and ending time of the service; and

d. The signature, date of signature and title of the individual providing the service;

(j) Psychological services which shall:

1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;

2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;

3. Include:

a. The administration of psychological testing;

b. Evaluation;

c. Diagnosis; and

d. Treatment,

4. Be incorporated into the plan of care [~~ISP~~] with input from

the psychological service provider for the development of program-wide support;

5. Be provided by a psychologist or a psychologist with autonomous functioning; and

6. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time of the service; and

c. The signature, date of signature and title of the individual providing the service;

(k) Residential support service which shall:

1. Include twenty-four (24) hour supervision in:

a. A staffed residence which shall not have greater than three (3) recipients of publicly-funded supports in a home rented or owned by the SCL provider;

b. A group home which shall be licensed in accordance with 902 KAR 20.078 and shall not have greater than eight (8) SCL recipients;

c. A family [~~care~~] home provider which shall not have greater than three (3) recipients of publicly-funded supports living in the home; or

d. An adult foster care home which shall not have greater than three (3) recipients of publicly-funded supports aged eighteen (18) or over living in the home;

2. Utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;

3. Not utilize a motor home;

4. Provide a sleeping room which ensures that an SCL recipient:

a. Does not share a room with an individual of the opposite sex who is not the SCL recipient's spouse;

b. Under the age of eighteen (18) does not share a room with an individual that has an age variance of more than five (5) years;

c. Does not share a room with an individual who presents a potential threat; and

d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the SCL recipient's health and comfort;

5. Provide assistance with daily living skills which shall include:

a. Ambulation;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning and preparation;

h. Laundry;

i. Budgeting and financial matters;

j. Home care and cleaning, or

k. Medication management;

6. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the plan of care [~~individual support plan~~];

7. Provide or arrange for transportation to services, activities, and medical appointments as needed;

8. Include participation in medical appointments and follow-up care as directed by the medical staff; and

9. Be documented by a detailed monthly summary note which shall include:

a. The month, day, and year for the time period the note covers;

b. Progression, regression and maintenance toward outcomes identified in the plan of care [ISP];

c. Pertinent information regarding the life of the SCL recipient; and

d. The signature, date of signature, and title of the individual preparing the staff note;

(l) Respite service which shall be:

1. Provided only to an SCL recipient unable to independently administer self-care;

2. Provided in a variety of settings;

3. Provided on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient;

4. Provided only to an SCL recipient who resides in a family [~~care~~] home provider, adult foster care home, or his or her own or family's home;

5. Limited to 1440 hours per calendar year; and

6. Documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the individual providing the service;

(m) Specialized medical equipment and supplies which shall:

1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;

2. Enable an SCL recipient to increase his or her ability to perform daily living activities or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a MAP-95;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision, hearing, or dental programs;

6. Meet applicable standards of manufacture, design and installation; and

7. Exclude those items which are not of direct medical or remedial benefit to the SCL recipient;

(n) Speech therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient with a speech or language disorder;

2. A physician ordered habilitative service in a specified amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Be provided by a speech therapist; and

6. Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care [ISP];

b. The date of the service;

c. The beginning and ending time; and

d. The signature, date of signature and title of the individual providing the service; or

(o) Supported employment which shall be:

1. Intensive, ongoing support for an SCL recipient to maintain paid employment in an environment in which an individual without a disability is employed;

2. Provided in a variety of settings;

3. Provided on a one-to-one basis;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient's file;

5. Exclusive of work performed directly for the supported employment provider;

6. Provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

7. Documented by:

a. A time and attendance record with shall include:

(i) The date of service;

(ii) The beginning and ending time; and

(iii) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period the note covers;

(ii) Progression, regression and maintenance toward outcomes identified in the plan of care [ISP]; and

(iii) The signature, date of signature and title of the individual preparing the note; and

8. Limited to forty (40) hours per week alone or in combination with adult day training.

Section 5. Consumer Directed Option. (1) Covered services and supports provided to an SCL recipient participating in CDO shall include:

(a) A home and community support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in the consumer's home or in the community;

3. Be based upon therapeutic goals and not diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services; and

5 a. Be respite for the primary caregiver; or

b. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

(i) Routine household tasks and maintenance;

(ii) Activities of daily living;

(iii) Personal hygiene;

(iv) Shopping;

(v) Money management;

(vi) Medication management;

(vii) Socialization;

(viii) Relationship building;

(ix) Leisure choices; or

(x) Participation in community activities; and

(b) A community day support service which shall:

1. Be available only under the consumer directed option;

2. Be provided in a community setting;

3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure or retirement activities;

4. Be based upon therapeutic goals and not diversional in nature; and

5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services.

(2) To be covered, a CDO service shall be specified in a consumer's plan of care;

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO SCL setting.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice of CDO provider shall be documented in the consumer's plan of care.

(5) A consumer may designate a representative to act on his or her behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists; or

(b) The consumer fails to pay patient liability;

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care;

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the SCL assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan or designate a CDO representative;

(d) Complete, and submit to the department and to DMR, a MAP-2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional SCL services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Except in a case where a consumer failed to pay patient liability, inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(11) A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a US citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Kentucky Administrative Office of the Courts or equivalent agency from any other state, for each state in which the individual resided or worked during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

1. A consumer may employ a provider prior to a central registry check result being obtained for up to fourteen (14) days; and

2. If a consumer does not obtain a central registry check result within fourteen (14) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) May be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of SCL recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(16) For a CDO participant, a support broker may conduct an assessment or reassessment.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency;

(b) A class II incident which shall:

1. Be serious in nature;

2. Involve the use of physical or chemical restraint;

3. Involve a medication error resulting in a physician or emergency room visit;

4. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery, and shall involve the case manager or support broker; and

5. Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery;

c. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1.a. Be grave in nature;

b. Be a medication error that occurs over multiple days or results in a delay in obtaining critical medications; or

c. Be a medication error resulting in harm or hospitalization of the individual;

2. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. Be reported by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. The guardian within eight (8) hours of discovery;

c. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209; and

d. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If the incident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notification to DMR shall occur on the following business day. The following documentation with a complete written report shall be submitted for a death:

(i) A current plan of care;

(ii) A current list of prescribed medications including PRN medications;

(iii) A current crisis plan;

(iv) Medication Administration Review (MAR) forms for the current and previous month;

(v) Staff notes from the current and previous month including details of physician and emergency room visits;

(vi) Any additional information requested by DMHMR;

(vii) A coroner's report when received; and

(viii) If performed, an autopsy report when received.

(3) All medication errors shall be reported to the Assistant Director of the Division of Mental Retardation, DMHMR, or designee on a monthly medication error report form by the 15th [~~tenth (10th)~~] of the following month.

Section 7. [~~6.~~] SCL Waiting List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department.

(2) An individual shall be placed on the SCL waiting list based upon his or her region of origin in accordance with KRS 205.6317(3) and (4).

(3) In order to be placed on the SCL waiting list, an individual shall submit to the department a completed MAP-620, Application for MR-DD Services, which shall include the following:

(a) A signature from a physician or an SCL MRP [~~a QMRP~~] indicating medical necessity;

(b) A current and valid MR/DD diagnosis, including supporting documentation to validate the diagnosis; and

(c) Completion of the Axis I, II, and III.

(4) DMHMR or its designee shall validate the MAP-620 application information.

(5) Prior to April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD [~~ICF/MR/DD~~] shall be September 22, 1995 or the date of admission to the ICF-MR-DD [~~ICF/MR/DD~~], whichever is later, and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(6) Beginning April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD [~~ICF/MR/DD~~] shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(7) The order of placement on the SCL waiting list for an individual not residing in an ICF-MR-DD [~~ICF/MR/DD~~] shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual as follows:

(a) Emergency. The need shall be classified as emergency if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:

1. Abuse, neglect or exploitation of the individual as substantiated by DCBS;

2. The death of the individual's primary caregiver and lack of alternative primary caregiver;

3. The lack of appropriate placement for the individual due to:

a. Loss of housing;

b. Inappropriate hospitalization; or

c. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status; [~~or~~]

5. The attainment of the age of twenty (20) years and six (6) months, for an individual in the custody of DCBS; or

6. Imminent or current institutionalization in an ICF-MR-DD;

(b) Urgent. The need shall be classified as urgent if a service is needed within one (1) year as determined by:

1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;

2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;

3. The diminished capacity of the primary caregiver due to physical or mental status and the lack of an alternative primary caregiver; or

4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention;

(c) Future planning. The need shall be classified as future planning if a service is needed in greater than one (1) year as deter-

mined by:

1. The individual is currently receiving a service through another funding source that meets his or her needs;

2. The individual is not currently receiving a service and does not currently need the service;

3. The individual is in the custody of DCBS and is less than twenty (20) years and six (6) months of age; or

4. The individual is less than twenty-one (21) years of age.

(8) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

(9) A written notification of original placement on the SCL waiting list and any changes due to reconsideration shall be mailed to an individual or his or her legal representative and case management provider if identified.

(10) In determining chronological status, the original date of receipt of a MAP- 620 shall be maintained and shall not change when an individual is moved from one (1) category of need to another.

(11) Maintenance of the SCL waiting list shall occur as follows:

(a) [~~During the first year of implementation of category of need, each individual currently on the SCL waiting list shall be contacted by phone or in person for validation to determine category of need;~~

~~(b)~~] Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region; and

(b)1. [~~(c)~~] The department shall, at a minimum, annually update the waiting list during the birth month of an individual.

2. The individual or his or her legal representative and case management provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and his or her continued desire to pursue placement in the SCL program.

3. If a discrepancy is noted in diagnostic information at the time of the annual update, the department may request a current diagnosis of MR/DD signed by a physician or SCL MRP [~~QMRP~~], including documentation supporting the diagnosis

4. The requested data shall be received by the department within thirty (30) days from the date of the letter.

(12) Reassignment of category of need shall be completed based on the updated information and validation process.

(13) An individual or his or her legal representative may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.

(14) If an individual on the SCL waiting list in the emergency category of need is placed in an ICF-MR-DD [~~ICF/MR/DD~~], the category of need shall not change.

(15) The criteria for removal from the SCL waiting list shall be:

(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;

(b) The individual is deceased;

(c) Review of documentation reveals that the individual does not have a mental retardation diagnosis or a developmental disability diagnosis as defined in Section 1 of this administrative regulation;

(d) Notification of potential SCL funding is made and the individual or his or her legal representative declines the potential funding and does not request to be maintained on the SCL waiting list; or

(e) Notification of potential SCL funding is made and the individual or his or her legal representative does not, without good cause, complete the application process with the department within sixty (60) days of the potential funding notice date.

1. The individual or legal representative shall have the burden of providing documentation of good cause, including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.

(16) If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list:

(a) The individual shall be moved to the future planning category; and

(b) The chronological date shall remain the same.

(17) If an individual is removed from the SCL waiting list, the department shall mail written notification to the individual or his or her legal representative and the case management [~~SCL coordination~~] provider.

(18) The removal of an individual from the SCL waiting list shall not prevent the submittal of a new application at a later date.

(19) The SCL waiting list, excluding the emergency category, shall be fixed as it exists ninety (90) days prior to the expected date of offering a placement based upon the allocation of new funding and shall be resumed following the allocation of new funding.

(20) An individual shall be allocated potential funding based upon:

(a) His or her region of origin in accordance with KRS 205.6317(3) and (4);

(b) His or her category of need; and

(c) His or her chronological date of placement on the SCL waiting list.

(21) To be allocated potential funding, an individual residing in an institution shall meet the following additional criteria:

(a) The treatment professionals determine that an SCL placement is appropriate for the individual; and

(b) The SCL placement is not opposed by the individual or his or her legal representative.

Section 8. [~~7.~~] Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120, and all applicable state and federal statutes and regulations.

(2) A SCL service provider choosing to utilize electronic signatures shall.

(a) Develop and implement a written security policy which shall:

1. Be adhered to by all of the provider's employees, officers, agents, and contractors;

2. Stipulate which individuals have access to each electronic signature and password authorization; and

3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(3) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.

Section 9. [~~8.~~] Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) An individual shall not appeal a category of need specified in Section 7 [6] of this administrative regulation.

Section 10. [9.] Incorporation by Reference. (1) "Supports for Community Living Manual, April 2007 [2006] edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4 30 p.m.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to the coverage of home and community based waiver services provided as an alternative to institutionalization to individuals with mental retardation or a developmental disability. (The home and community based services program for individuals with mental retardation or a developmental disability is known as the "supports for community living" or "SCL" program).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes a consumer directed option (CDO) program that allows, in accordance with KRS 205.5606, Medicaid SCL recipients to choose their providers of non-medical services as well as how and when they will receive the services. SCL CDO services include home and community support services and community day support services listed in the consumer's approved plan of care. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. This amendment also requires SCL providers' employees and volunteers to submit to a child abuse/neglect central registry check and a check of the nurse aide abuse registry, and not be listed on either registry for the purpose of employment or service as a volunteer. This amendment further establishes what types of documentation must be provided to the department in case of death of an SCL recipient.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the CDO program established by KRS 205 5606 for SCL recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205.5606 by implementing the CDO program for SCL recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by implementing CDO program for SCL recipients in accordance with KRS 205.5605 and 205.5606.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect any Medicaid SCL waiver recipient who opts to participate in the CDO program as well as any individual who chooses to be a CDO provider.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: SCL waiver recipients may opt to participate in the consumer directed option program. An individual who chooses to participate will be assisted by a support broker. Individuals who wish to provide consumer directed option services must meet basic requirements including: complete and submit a CDO provider agreement to the consumer's support broker, be at least 18 years old, pass a criminal background check, complete training identified by the consumer, report any suspected abuse, neglect or exploitation, demonstrate ability to safely attend to consumer, and be able to communicate effectively.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment is required by KRS 205.5606 and does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An SCL waiver recipient who enrolls in the consumer directed option program will be able to choose their providers of non-medical services, in their approved plan of care, as well as how and when they will receive the services. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and nonmedical home and community based services and supports. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. CDO providers will be reimbursed for providing services to CDO consumers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Pursuant to KRS 205 5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid Program for nonresidential and non-medical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermedianes). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers Therefore, the DMS is unable to determine a precise fiscal impact at this time.

(b) On a continuing basis: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and non-medical services for the consumer. Additionally, the DMS is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the DMS is unable to determine a precise fiscal impact at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: SCL providers, as a result of an amendment to this administrative regulation, will be required to obtain a child abuse/neglect central registry check for potential staff, volunteers, and for an annual sampling of staff. Central registry checks cost $10 per individual.

(9) Tiering: Is tiering applied? Consumer-directed option (CDO) providers are subject to less strict provider qualifications than non-CDO providers in order to enhance recipient access to services and to facilitate greater recipient independence among recipients in accordance with KRS 205 5606.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each SCL waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and 205.5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

STATEMENT OF EMERGENCY
907 KAR 1:170E

This emergency administrative regulation is being promulgated to amend reimbursement for home and community based (HCB) waiver services provided by local health departments and to increase the HCB assessment and reassessment rates. Local health department reimbursement shall be cost-based in addition to the already established fee-for-service basis. Local health departments serve as a critical safety net for HCB recipients in the commonwealth and this initiative is necessary to maintain the viability of that safety net. HCB assessment and reassessment reimbursement must be increased in order to ensure an adequate supply of providers to serve the HCB community. This action must be taken on an emergency basis to protect the health, safety and welfare of HCB recipients by ensuring access to necessary care. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Emergency Amendment)

907 KAR 1:170E. Reimbursement for home and community based waiver services.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

EFFECTIVE: July 12, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by home and community based waiver service providers to an eligible recipient as an alternative to nursing facility care.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20.066, Section 4; and

(b) Certified for Medicaid participation by the department.

(3) "Cost report" means the Home Health and Home and Community Based Cost Report and the Home Health and Home and Community Based Cost Report Instructions.

(4) "DD" means developmentally disabled.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Fixed upper limit" means the maximum amount the department shall reimburse for a unit of service.

(7) "HCB" means home and community based waiver.

(8) "HCB recipient" means an individual who:

(a) Meets the criteria for a recipient as defined in KRS 205.8451; and

(b) Meets the criteria for HCB [~~waiver~~] services as established in 907 KAR 1:160.

[~~(8) "Home and community based waiver" or "HCB waiver" means home and community based waiver services.~~]

(9) "Level I" means a reimbursement rate of up to two (2) dollars and fifty-seven (57) [~~thirty (30) dollars and eighty (80)~~] cents paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient [~~HCB waiver~~].

(10) "Level II" means a reimbursement rate of up to three (3) dollars and twelve (12) [~~thirty-seven (37) dollars and forty (40)~~] cents paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient [~~HCB waiver~~], if the ADHC center meets the criteria established in Sections 5 and 6 of this administrative regulation.

(11) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(12) "Occupational therapist" is defined by KRS 319A 010(3).

(13) "Physical therapist" is defined by KRS 327.010(2)

(14) "Quality improvement organization" or "QIO" is defined in 42 C.F.R. 475 101.

(15) "Speech-language pathologist" is defined by KRS 334A 020(3)

Section 2 HCB Service Reimbursement. (1) Except as provided in Section 3 or 4 of this administrative regulation, the de-

partment shall reimburse for a home and community based waiver service provided in accordance with 907 KAR 1:160 at the lessor of billed charges or the fixed upper payment rate for each unit of service. The following rates shall be the fixed upper payment rate limits:

Home and Community Based Waiver Service	Fixed Upper Payment Rate Limit	Unit of Service
Assessment	$100 00	Entire assessment process
Reassessment	$100 00	Entire reassessment process
Case Management	$15 00	15 minutes
Homemaking	$13 00	30 minutes
Personal Care	$15 00	30 minutes
Attendant Care	$11.50	1 hour (not to exceed 45 hours per week)
Respite	$2,000 per 6 months (January 1 through June 30 and July 1 through December 31, not to exceed $4,000 per calendar year)	1 hour
Minor Home Adaptation	$500 per calendar year	

(2) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

(3) A homemaking service shall be limited to no more than four (4) units per week per HCB recipient.

Section 3. Local Health Department HCB Service Reimbursement. (1) The department shall reimburse a local health department for HCB services:

(a) Pursuant to Section 2 of this administrative regulation; and

(b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall submit a cost report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual cost report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual cost report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's cost report if it determines an audit is necessary. [~~Payment Amounts for HCB Waiver Covered Services Prior to July 1, 2001. (1) An HCB waiver provider providing services to an HCB recipient shall comply with the provisions established in 907 KAR 1:031 and 907 KAR 1:160.~~

~~(2) An HCB waiver provider shall be reimbursed in accordance with the reimbursement methodology established in 907 KAR 1:031 for the following HCB waiver services.~~

~~(a) Assessment;~~

~~(b) Reassessment;~~

~~(c) Case management;~~

~~(d) Homemaker; or~~

~~(e) Personal care.~~

~~(3) For a rate determined in accordance with the reimbursement methodology established in 907 KAR 1:031, the department shall apply a fixed upper limit which shall apply regardless of the length of time a provider has participated in the Medicaid Program.~~

~~(4) The fixed upper limit for an HCB waiver service shall be set:~~

~~(a) Using each HCB waiver provider's average unit cost per service which shall be:~~

~~1. Grouped by service, and~~

~~2. Arrayed from lowest to highest;~~

~~(b) Using the median per unit cost for each service array based on the median number of Medicaid units; and~~

~~(c) At 130 percent of the median cost per unit.~~

~~(5) The department shall:~~

~~(a) Use an HCB waiver provider's most recent cost report data available as of May 31 to determine the provider's rate for the next state fiscal year, which begins July 1;~~

~~(b) Update upper limits each July 1; and~~

~~(c) Except as provided in subsection (3) of this section, not apply upper limits until a provider has participated in the program for two (2) full agency fiscal years.~~

~~(6) If a provider fails to submit a cost report to the department before May 31, that provider's rates for HCB waiver services shall remain the same as those of the previous fiscal year, until receipt of an acceptable cost report.~~

~~(7) Payment for a covered respite service shall:~~

~~(a) Be limited to $2,000 per six (6) month period within a calendar year beginning January 1 through June 30 and July 1 through December 31;~~

~~(b) Not exceed $4,000 per calendar year for a period beginning January 1 through December 31;~~

~~(c) Be subject to a year end cost settlement by the department:~~

~~1. To actual cost up to $4,000; or~~

~~2. To charges, if lower; and~~

~~(d) Be made upon receipt of a claim to the department by an HCB waiver provider pursuant to 907 KAR 1:673.~~

~~(8) Payment for a minor home adaptation to an HCB recipient's home shall:~~

~~(a) Be made on the basis of actual billed charges;~~

~~(b) Be for the actual cost of the minor home adaptation, including actual overhead cost which shall not exceed twenty (20) percent of actual cost;~~

~~(c) Not exceed a maximum of $500 per calendar year per HCB recipient beginning January 1; and~~

~~(d) Be subject to a year end cost settlement by the department:~~

~~1. To actual cost up to $500; or~~

~~2. To charges, if lower.~~

~~(9) An attendant care service shall:~~

~~(a) Be reimbursed on a fee for service basis at the lower of reasonable cost or charge not to exceed the Medicaid upper limit of eleven (11) dollars and fifty (50) cents per unit of service;~~

~~(b) Be reported as nonreimbursable cost in an HCB waiver provider's cost report; and~~

~~(c) Not be subject to year end cost settlement.~~

~~(10) Attendant care shall be limited to forty five (45) hours per week and travel time for an attendant shall not be included in a unit of service.~~

~~Section 3. Audits of HCB Waiver Providers. HCB waiver cost reports shall be audited:~~

~~(1) As deemed necessary by the department; and~~

~~(2) To ensure that final payment to a provider is made in accordance with 907 KAR 1:031.~~]

Section 4. Reimbursement for an ADHC Service. (1) Reimbursement shall:

(a) Be made:

1. Directly to an ADHC center; and

2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 120 [~~ten (10)~~] units per calendar week at each

HCB recipient's initial review or recertification.

(2) Level I reimbursement shall be the lesser of the provider's usual and customary charges or two (2) dollars and fifty-seven (57) [~~thirty (30) dollars and eighty (80)~~] cents per unit of service.

(3) Level II reimbursement shall be the lesser of the provider's usual and customary charges or three (3) dollars and twelve (12) [~~thirty-seven dollars and forty (40)~~] cents per unit of service.

(4) The department shall not reimburse an ADHC center for more than twenty-four (24) [~~two (2)~~] basic units of service per day per HCB recipient

(5) An ADHC basic daily service shall:

(a) Constitute care for one (1) HCB recipient; and

(b) Not exceed twenty-four (24) units per day.

(6) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(7) [~~(b) Be a minimum of:~~

~~1. Three (3) hours per day for one (1) unit, or~~

~~2. Two (2) hours for one (1) unit if the HCB recipient has occupied the ADHC center for two (2) hours prior to leaving the center due to a documented illness or emergency;~~

~~(c) Be a minimum of six (6) hours for two (2) units; and~~

~~(d) Not exceed two (2) units per day.~~

~~(6)~~] An ADHC center may request a Level II reimbursement rate for an HCB recipient if the ADHC center meets the following criteria:

(a) The ADHC center has an average daily census limited to individuals designated as:

1. HCB recipients [~~waiver~~];

2. Private pay; or

3. Covered by insurance; and

(b) The ADHC center has a minimum of eighty (80) percent of its individuals meeting the requirements for DD as established in Section 5(2) of this administrative regulation

(8) [~~(7)~~] If an ADHC center does not meet the Level II requirements established in Section 5 of this administrative regulation, the ADHC center shall be reimbursed at a Level I payment rate for the quarter for which the ADHC center requested Level II reimbursement

(9) [~~(8)~~] To qualify for Level II reimbursement, an ADHC center that was not a Medicaid provider before July 1, 2000 shall:

(a) Have an average daily census of at least twenty (20) individuals who meet the criteria established in subsection (7)[~~(6)~~](a) of this section, and

(b) Have a minimum of eighty (80) percent of its individuals meet the definition of DD as established in Section 5(2) of this administrative regulation.

(10) [~~(9)~~] To qualify for reimbursement as an ancillary therapy, a service shall be:

(a) Medically necessary;

(b) Ordered by a physician; and

(c) Limited to.

1. Physical therapy provided by a physical therapist [~~as defined in 907 KAR 1:160, Section 1(18)~~];

2. Occupational therapy provided by an occupational therapist [~~as defined in 907 KAR 1:160, Section 1(17)~~], or

3. Speech therapy provided by a speech-language [~~speech~~] pathologist [~~as defined in 907 KAR 1:160, Section 1(23)~~].

(11) [~~(10)~~] Ancillary therapy service reimbursement shall be:

(a) Per HCB recipient per encounter; and

(b) The usual and customary charges not to exceed the Medicaid upper limit of seventy-five (75) dollars per encounter per HCB recipient.

(12) [~~(11)~~] A respite service shall:

(a) Be provided on site in an ADHC center; and

(b) Be provided pursuant to 907 KAR 1:160.

(13) [~~(12)~~] One (1) respite service unit shall equal one (1) hour to one (1) hour and fifty-nine (59) minutes.

(14) [~~(13)~~] The length of time an HCB recipient receives a respite service shall be documented.

(15) [~~(14)~~] A covered respite service shall be reimbursed as established in Section 7 of this administrative regulation.

Section 5. Criteria for DD ADHC Level II Reimbursement. To qualify for Level II reimbursement:

(1) An ADHC center shall meet the requirements established in Section 4 of this administrative regulation, and

(2) Eighty (80) percent of its ADHC service individuals shall have:

(a) A substantial disability that shall have manifested itself before the individual reaches twenty-two (22) years of age,

(b) A disability that is attributable to mental retardation or a related condition which shall include:

1. Cerebral palsy;

2. Epilepsy;

3. Autism; or

4. A neurological condition that results in impairment of general intellectual functioning or adaptive behavior, such as mental retardation, which significantly limits the individual in two (2) or more of the following skill areas:

a. Communication;

b. Self-care;

c. Home-living;

d. Social skills;

e. Community use;

f. Self direction,

g. Health and safety;

h. Functional academics;

i. Leisure; or

j. Work; and

(c) An adaptive behavior limitation similar to that of a person with mental retardation, including.

1. A limitation that directly results from or is significantly influenced by substantial cognitive deficits; and

2. A limitation that may not be attributable to only a physical or sensory impairment or mental illness.

Section 6. The Assessment Process for Level II ADHC Reimbursement. (1) To apply for Level II ADHC reimbursement, an ADHC center shall contact the QIO on the first of the month prior to the end of the current calendar quarter. If the first of the month is on a weekend or holiday, the ADHC center shall contact the QIO the next business day.

(2) The QIO shall be responsible for randomly determining the date each quarter for conducting a Level II assessment of an ADHC center.

(3) In order for an ADHC center to receive Level II reimbursement:

(a) An ADHC center shall:

1. Document on a MAP-1021 form that it meets the Level II reimbursement criteria established in Section 5 of this administrative regulation;

2. Submit the completed MAP-1021 form to the QIO via facsimile or mail no later than ten (10) working days prior to the end of the current calendar quarter in order to be approved for Level II reimbursement for the following calendar quarter; and

3. Attach to the MAP-1021 form a completed and signed copy of the "Adult Day Health Care Attending Physician Statement" for each individual listed on the MAP-1021 form;

(b) The QIO shall review the MAP-1021 form submitted by the ADHC center and determine if the ADHC center qualifies for Level II reimbursement; and

(c) The department shall review a sample of the ADHC center's Level II assessments and validate the QIO's determination.

(4) If the department invalidates an ADHC center Level II reimbursement assessment, the department shall:

(a) Reduce the ADHC center's current rate to the Level I rate, and

(b) Recoup any overpayment made to the ADHC center.

(5) If an ADHC center disagrees with an invalidation of a Level II reimbursement determination, the ADHC center may appeal in accordance with 907 KAR 1.671, Sections 8 and 9.

Section 7. [~~Fixed Upper Payment Rate Limits. (1) Except as provided in Section 4 of this administrative regulation, the payment rate for a home and community based waiver service provided in accordance with 907 KAR 1:160 shall be the lesser of billed charges or the fixed upper payment rate for each unit of service. The following rates shall be the fixed upper payment rate limits.~~]

[~~Home and Community Based Waiver Service~~	~~Fixed Upper Payment Rate Limit~~	~~Unit of Service~~
~~Assessment~~	~~$75.00~~	~~Entire assessment process~~
~~Reassessment~~	~~$75.00~~	~~Entire reassessment process~~
~~Case Management~~	~~$15.00~~	~~15 minutes~~
~~Homemaking~~	~~$13.00~~	~~30 minutes~~
~~Personal Care~~	~~$15.00~~	~~30 minutes~~
~~Attendant Care~~	~~$11.50~~	~~1 hour (not to exceed 45 hours per week)~~
~~Respite~~	~~$2,000 per 6 months (January 1 through June 30 and July 1 through December 31, not to exceed $4,000 per calendar year)~~	~~1 hour]~~
~~Minor Home Adaptation~~	~~$500 per calendar year~~	

~~[(2) The services listed in subsection (1) of this section shall not be subject to cost settlement by the department.~~

~~(3) A homemaking service shall be limited to no more than four (4) units per week per HCB recipient.~~

~~Section 8.~~] Appeal Rights. An HCB service [~~waiver~~] provider may appeal a department decision [~~decisions~~] as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 9. Incorporation by Reference (1) The following material is incorporated by reference

(a) "Map-1021, ADHC Payment Determination Form", August 2000 Edition;

(b) "Adult Day Health Care Attending Physician Statement", August 2000 Edition;

(c) "The Home Health and Home and Community Based Cost Report", May 1991 Edition; and

(d) "The Home Health and Home and Community Based Cost Report Instructions", October 1999 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to home and community based (HCB) waiver service reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to home and community based (HCB) waiver service reimbursement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to home and community based (HCB) waiver service reimbursement

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to home and community based (HCB) waiver service reimbursement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes that reimbursement for HCB providers who are local health departments shall be cost-based in addition to the already established fee-for-service basis as well as increases HCB assessment and reassessment reimbursement from 75 dollars to 100 dollars. Local health department HCB providers shall receive a cost settlement if the fee schedule reimbursement resulted in payments equaling less than the entity's cost for the year. Conversely, if their reimbursement for the year exceeds cost, the Department for Medicaid Services (DMS) shall recoup any such excess. DMS employs this same practice with local health departments that provide home health care. Additionally, adult day health care (ADHC) unit length is revised to capture more accurate or detailed amounts of time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure HCB recipient access to services by strengthening local health department participation. Currently the Department for Medicaid Services (DMS) employs this same practice with local health departments that provide home health care. HCB assessment and reassessment reimbursement must be increased in order to ensure an adequate supply of providers to serve the HCB community. Additionally, adult day health care (ADHC) unit length is revised to capture more accurate or detailed amounts of time.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that local health department reimbursement for HCB services rendered shall equal cost and by ensuring an adequate supply of HCB providers

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that local health department reimbursement for HCB services rendered shall equal cost and by ensuring that local health department reimbursement for HCB services rendered shall equal cost and by ensuring an adequate supply of HCB providers.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect local health departments providing HCB services and HCB providers who perform assessments or reassessments.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment alters reimbursement for local health departments and for HCB providers who perform assessments or reassessments. Local health departments must submit a cost report in order to receive cost-based reimbursement; however, they already submit cost reports to identify home health care delivered as opposed to home and community based service care. Therefore, the department foresees no additional administrative burden. HCB providers who perform assessments or reassessments are not required to take any action to receive the increased reimbursement. ADHC service providers will be able to capture more accurate or detailed amounts of time when billing for services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment does not impose a cost on regulated entities. ADHC service providers will be able to capture more accurate or detailed amounts of time when billing for services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Local health department reimbursement will equal cost as opposed to the current methodology which may result in reimbursement falling short of cost, and HCB providers who perform assessments or reassessments will receive

an increased reimbursement for those services. ADHC service providers will be able to capture more accurate or detailed amounts of time when billing for services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision. DMS projects the unit length amendment to be budget neutral.

(b) On a continuing basis: DMS anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision. DMS projects the unit length amendment to be budget neutral.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes that reimbursement for HCB providers that are local health departments shall be cost-based in addition to the already established fee-for-service basis; thus, if at fiscal year end a local health department's cost has exceeded its HCB fee-for-service reimbursement the local health department shall reimburse the department for the difference.

(9) Tiering: Is tiering applied? Tiering is applied in that only local health department HCB reimbursement shall be cost-based. Local health departments provide a critical safety net of HCB services and are reimbursed on a cost basis in the home health program as well. This action is necessary to ensure recipient access to HCB services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect local health departments that provide HCB service and HCB providers who perform assessments or reassessments.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.030(2), 194A.050(1) and 205.520(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates that the amendment will increase local health department revenues; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. DMS anticipates that the amendment will increase local health department revenues; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): DMS anticipates that the amendment will increase local health department revenues; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

Expenditures (+/-): DMS anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

STATEMENT OF EMERGENCY
907 KAR 1:672E

This emergency administrative regulation is being promulgated to comply with SB 98 2007 GA which requires the Department for Medicaid Services to develop a specific form and establish guidelines for assessing the credentials of dentists applying for participation in the Medical Assistance Program. These actions must be taken on an emergency basis to meet a deadline for the promulgation of an administrative regulation that is established by state law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Emergency Amendment)

907 KAR 1:672E. Provider enrollment, disclosure, and documentation for Medicaid participation.

RELATES TO: KRS 205.520, 205.8451(2),(7),(8),(9), 205.8477, 304.17A-545(5), 311.621-311.643, 42 U.S.C. 1396a(w), 42 C.F.R. 455.100-455.106, Ky. Acts ch. 34

EFFECTIVE: July 12, 2007

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(12), 42 U.S.C. 1396a, b, c[, ~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for

Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560(12) requires the Medical Assistance Program to use the form and guidelines established pursuant to KRS 304.17A-545(5) for assessing the credentials of those applying for participation in the Medical Assistance Program. Ky. Acts ch. 34 (SB 98 2007 GA) requires the department to develop a specific form and establish guidelines for assessing the credentials of dentists applying for participation in the Medical Assistance Program. The administrative regulation establishes provisions related [sets forth the provisions relating] to Medicaid provider enrollment, disclosure, [and] documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

Section 1. Definitions. (1) "Applicant" means a person or entity who applies for enrollment as a participating [submits an application to become a] Medicaid provider.

(2) ["Application" means the completion and submission of a Medicaid provider agreement and any required addendum specific to a provider type, which is the contract between the provider and the department for the provision of Medicaid services.

(3)] "Cabinet" means the Cabinet for Health and Family Services.

(3) [(4)] "Claim" means a [any] request for payment under the Medicaid Program that:

(a) Relates to each individual billing submitted by a provider to the department;

(b) [which] Details services rendered to a recipient on a specific date; and

(c) [date(s). The claim] May be [either] a line item of service or all services for one (1) recipient on a bill.

(4) "Credentialed provider" means a provider that is required to complete the credentialing process in accordance with KRS 205.560(12) and Ky. Acts ch. 34 and includes the following individuals who apply for enrollment in the Medicaid Program:

(a) A dentist;

(b) A physician;

(c) An audiologist;

(d) A certified registered nurse anesthetist;

(e) An optometrist;

(f) An advance registered nurse practitioner;

(g) A podiatrist;

(h) A chiropractor; or

(i) A physician assistant.

(5) "Department" means the Department for Medicaid Services or its designated agent [and its designated agents].

(6) ["Disclosing entity" means a Medicaid provider or the fiscal agent for the department.

(7)] "Disclosure" means the provision of information required by 42 C.F.R. 455.100 through 455.106 [in accordance with the requirements shown in 42 C.F.R. 455, Subpart B].

(7)[(8)] "Exclusion" means the termination of a provider's participation in the Medicaid Program or the denial of a provider's enrollment in the Medicaid Program.

(8) "Evaluation" or "credentialing" means:

(a) A process for collecting and verifying professional qualifications of a health care provider;

(b) An assessment of whether a health care provider meets specified criteria relating to professional competence and conduct; and

(c) A process to be completed before a health care provider may participate in the Medicaid Program on an initial or ongoing basis.

(9) "Furnish" means to provide medical care, services, or supplies that are:

(a) Provided directly by a provider;

(b) Provided under the supervision of a provider; or

(c) Prescribed by a provider.

(10) "Managing employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over or conducts the day-to-day operation of an institution, entity, organization, or agency.

(11) "Medically necessary" or "medical necessity" means a covered benefit is:

(a) Reasonable and required to identify, diagnose, treat, correct, cure, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(b) Appropriate in terms of the service, amount, scope, and duration based on generally accepted standards of good medical practice;

(c) Provided for medical reasons rather than primarily for the convenience of the individual, the individual's caregiver, or the health care provider, or for cosmetic reasons;

(d) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;

(e) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard;

(f) Provided in accordance with Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441, Subpart B for individuals under twenty-one (21) years of age; and

(g) Provided in accordance with 42 C.F.R. 440.230.

(12) "Noncredentialed provider" means a provider that is not required to complete the credentialing process in accordance with KRS 205.560(12) and includes any individual or entity not identified in subsection (4) of this section.

(13) "Provider" is defined by KRS 205.8451(7).

(14) "Recipient" is defined by KRS 205.8451(9).

(15) "Reevaluation" or "recredentialing" means a process for identifying a change that may have occurred in a health care provider since the last evaluation or credentialing that may affect the health care provider's ability to perform services.

(16) [as defined in 907 KAR 1:671.

(9) "Fiscal agent" means a contractor that processes or pays provider claims on behalf of the department.

(10) "Furnish" means as defined in 907 KAR 1:671.

(11) "Managing employee" means as defined in 907 KAR 1:671.

(12) "Provider" means as defined by KRS 205.8451.

(13) "Recipient" means as defined by KRS 205.8451.

(14)] "Services" means medical care, services, or supplies provided to a Medicaid recipient [recipients].

(17) "Subcontractor" means an individual, agency, entity, or organization to which a Medicaid provider or the department's fiscal agent has:

(a) Contracted or delegated some of its management functions or responsibilities of providing medical care or services to its patients; or

(b) Entered into a contract, agreement, purchase order, or lease, including lease of real property, to obtain space, supplies, equipment, or nonmedical services associated with providing services and supplies that are covered under the Medicaid Program.

(18) "Terminated" means a provider's participation in the Medicaid Program has ended and a contractual relationship no longer exists between the provider and the department for the provision of Medicaid-covered services to eligible recipients by the provider or its subcontractor.

(19) "Unacceptable practice" means conduct by a provider which constitutes "fraud" or "provider abuse", as defined in KRS 205.8451(2) or (8), or willful misrepresentation, and includes the following practices:

(a) Knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, a person to submit false claims;

(b) Knowingly making, or causing to be made, or inducing, or seeking to induce, a false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment;

(c) Having knowledge of an event that affects the right of a provider to receive payment and concealing or failing to disclose the event or other material omission with the intention that a pay-

ment be made or the payment is made in a greater amount than otherwise owed.

(d) Conversion;

(e) Soliciting or accepting bribes or kickbacks;

(f) Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services and supplies furnished, or to comply with other requirements established in 907 KAR 1:673, Section 2;

(g) Knowingly submitting a claim or accepting payment for medical care, services, or supplies furnished by a provider who has been terminated or excluded from the program;

(h) Seeking or accepting additional payments, for example, gifts, money, donations, or other consideration, in addition to the amount paid or payable under the Medicaid Program for covered medical care, services, or supplies for which a claim is made;

(i) Charging or agreeing to charge or collect a fee from a recipient for covered services which is in addition to amounts paid by the Medicaid Program, except for required copayments or recipient liability, if any, required by the Medicaid Program;

(j) Engaging in conspiracy, complicity, or criminal syndication;

(k) Furnishing medical care, services, or supplies that fail to meet professionally recognized standards, or which are found to be noncompliant with licensure standards promulgated under KRS Chapter 216B and failing to correct the deficiencies or violation as reported to the department by the Office of Inspector General, for health care or which are beyond the scope of the provider's professional qualifications or licensure;

(l) Discriminating in the furnishing of medical care, services, or supplies as prohibited by 42 U.S.C. 2000d;

(m) Having payments made to or through a factor, either directly or by power of attorney, as prohibited by 42 C.F.R. 447.10;

(n) Offering or providing a premium or inducement to a recipient in return for the recipient's patronage of the provider or other provider to receive medical care, services or supplies under the Medicaid Program;

(o) Knowingly failing to meet disclosure requirements;

(p) Unbundling; or

(q) An act committed by a nonprovider on behalf of a provider which, if committed by a provider, would result in the termination of the provider's enrollment in the program.

~~[(15) "Subcontractor" means as defined in 907 KAR 1:671.~~

~~(16) "Terminated" means as defined in 907 KAR 1:671.~~

~~(17) "Unacceptable practice(s)" means as defined in 907 KAR 1:671.]~~

Section 2. Enrollment Process for Provider Participation in Medicaid. (1) Scope.

(a) The department shall contract only with an individual or entity capable of demonstrating its ability to meet the conditions of Medicaid provider participation [~~only those providers or entities who can demonstrate that they are qualified~~] in accordance with 907 KAR 1:671 [~~as determined by the department to participate as a provider~~].

(b) The department reserves the right to contract or not contract with any potential provider.

(c) An individual or entity that wishes to participate:

1. [~~(b) All providers or entities who wish to participate~~] in the Medicaid Program shall be enrolled as a participating provider [~~participating providers~~] prior to being eligible to receive reimbursement in accordance with federal and state laws; and

2. As a KenPAC primary care provider shall meet the provider participation criteria set forth in 907 KAR 1:320, Kentucky Patient Access and Care System (KenPAC).

(2) To apply for enrollment in the Medicaid Program as a non-credentialed provider, an individual or entity shall submit:

(a) A completed MAP-811, Non-Credentialed Provider Application, and

(b) Proof of a valid professional license, registration, or certificate that allows the:

1. Individual to provide services within the individual's scope of practice; or

2. Entity to operate or provide services within the entity's scope of practice.

(3) To apply for enrollment in the Medicaid Program as a credentialed provider, an individual shall submit:

(a) A completed MAP-811, Individual Provider Application;

(b) Proof of a valid professional license, registration, or certificate that allows the individual to provide services within the individual's scope of practice; and

(c)1. Except for a dentist, a completed KAPER-1, Kentucky Application for Provider Evaluation and Re-evaluation; and

2. If licensed to practice as a dentist, a completed Dental Credentialing Form; or

3. Pursuant to 806 KAR 17:480, Section 2(4), and in lieu of the KAPER-1, the provider application form of the Council for Affordable Quality Healthcare.

(4)(a) [~~New enrollments. Any provider or entity interested in participating as a Medicaid provider shall be required to submit an application for enrollment in accordance with this section.~~

~~(3) Enrolled providers. Upon receiving notice from the department, all existing providers or entities enrolled as participating providers in the Medicaid Program shall be required to submit a new or revised application for enrollment to continue their Medicaid participation.~~

~~(a) Providers shall have thirty-five (35) days from the date of the notice to submit a completed and signed application to the department.~~

~~(b) The notice shall inform the provider that failure to return the completed and signed application within thirty-five (35) days from the date of the notice shall result in termination of participation.~~

~~(c) Submission of the application within thirty-five (35) days from the date of the notice shall permit the continuation of the existing provider participation until the application for enrollment the Medicaid Program has been approved or denied and notice has been sent to the provider.~~

~~(d) The department may revise enrollment requirements by regulatory revision made in accordance with the requirements of KRS Chapter 13A and reenroll providers, if necessary, for effective management of the Medicaid Program.~~

~~(4) Application for enrollment as a participating provider shall be processed in the following manner.~~

~~(a) All applicants for participation shall complete and sign a provider agreement, disclosure of ownership and control interest statement, certification with regard to lobbying activity, pursuant to 31 U.S.C. 1352, provide proof of a valid professional license, registration, or certificate which allows the applicant to provide the services for which the applicant contracts, and provide any additional clarifying information requested for processing of the application.~~

~~(b)~~] The department may require [~~any~~] additional clarifying information from an individual or entity that applies for enrollment in the Medicaid Program as a participating provider [~~the applicant with regard to qualifications for participation~~].

(b) If the applicant does not respond within the time period specified in the department's request for additional clarifying information, the department may deny enrollment [~~application for participation may be denied~~] unless an extension of time is requested by the provider and granted by the department.

(c) The department may require that an on-site inspection be performed to ascertain compliance with applicable licensure standards established in [~~as promulgated under~~] KRS Chapter 216B, and certification standards, prior to an enrollment determination.

(d)1. The department shall [~~complete its application review and~~] make an enrollment determination within ninety (90) days of [~~after~~] receipt of:

a. The completed application documents described in subsection (2) or (3) of this section; and

b. Any additional information requested by the department.

2. The department may take additional time beyond ninety (90) days to render a decision if [~~for the decision when~~] necessary for resolution of an issue or dispute [~~issues or disputes~~].

3. If additional time is needed to render a decision, the department shall notify the applicant that a decision will be issued after the ninety (90) day timeframe described in subparagraph 1. [~~However, notice shall be sent to the applicant in those matters requiring additional time to process.~~]

(5) Approval of enrollment in the Medicaid Program as a par-

ticipating provider [an application].

(a) Upon approval of enrollment, the department shall issue a provider number that shall be used by the provider solely [an application, the provider shall be issued an identifying number, known as a provider number, which shall be used exclusively by the provider] for billing and identification purposes.

(b) A provider's participation shall begin and end on the dates specified in the notification of approval for [of] program participation, unless the provider's [provider] participation is [otherwise] terminated in accordance with this administrative regulation, 907 KAR 1:671, or other applicable state or federal laws.

(6) By enrolling in the Medicaid Program, a provider, the provider's [, the provider, its] officers, directors, agents, employees, and subcontractors agree to:

(a) Maintain the documentation for claims as required by Section 4 of this administrative regulation;

(b) Provide [Furnish], upon request, all information regarding the nature and extent of services and claims [for payment] submitted by, or on behalf of[,] the provider, to the:

1. [The] Cabinet; [for Health and Family Services,]
2. [The] Department;
3. [The] Attorney General;
4. [The] Auditor of Public Accounts,
5. [The] Secretary of the United States Department of Health and Human Services; or [and]
6. [The] Office of the United States Attorney;

(c) Comply with the disclosure requirements established in [of] Section 3 of this administrative regulation;

(d) Comply with the applicable advance directive [directives] requirements established in [of] 42 U.S.C. 1396a(w) regarding [with regard to] the right to accept or reject life-saving medical procedures as described in KRS 311.621 - 311.643 [et seq];

(e) Accept payment from Medicaid as payment in full for all care, services, benefits, or [and] and supplies billed to the Medicaid Program, except with regard to recipient cost-sharing charges [copayments] and beneficiary liability, if any,

(f) Submit claims for payment only for care, services, benefits, or [and] supplies;

1. Actually furnished to eligible recipients; [beneficiaries] and
2. Medically necessary or otherwise authorized by law;

(g) Provide true, accurate, and complete information in relation to any claim for payment;

(h)1. Permit review or audit of all books or records or, at the discretion of the auditing agency, a sample of books or records related [thereof, relating] to services furnished and payments received from [under] Medicaid, including recipient histories, case files, and recipient specific data [as listed below].

2. Failure to allow access to records may result in the provider's liability for costs incurred by the cabinet associated with the review of records, including food, lodging and mileage,[.]

(i) Not engage in any activity that [which] would constitute an unacceptable practice;

(j) Comply with all terms and provisions contained in the application documents described in subsection (2) or (3) of this section; [provider agreement; and]

(k) Comply with all applicable federal laws, [and] state statutes, and state administrative regulations related to the applicant's [relating to their] provider type and provision of services under the Medicaid Program; and

(l) Bill third party payors in accordance with Medicaid statutes and administrative regulations.

(7) Denial of enrollment or reenrollment in the Medicaid Program [an application for participation].

(a) The department shall deny enrollment if an applicant meets one (1) of the following conditions [Reasons for denial of application for participation shall include the following factors]:

1. Falsely represents, omits, or fails [Any false representation, omission, or failure] to disclose of any material fact in making an application for enrollments in accordance with subsection (2) or (3) of this section;

2. Is currently suspended, excluded, terminated, or involuntarily withdrawn from participation [Any suspension, exclusion, termination, or involuntary withdrawal from participation currently in effect] in any governmental medical insurance program as a result of fraud or abuse of that program;

3. Falsely represents, omits, or fails to disclose any material of fact in making [Any false representation or omission of] an application for a [any] license, permit, certificate, or registration related to a health care profession or business;

4. Has failed [Any previous failure] to comply with applicable standards in the operation of a health care business or enterprise after having received written notice of noncompliance from:

a. The department, or

b. A state or federal licensing, certifying, or auditing agency;

5. Is under [A] current investigation, indictment or conviction for fraud and abuse or unacceptable practice in:

a. The Kentucky Medicaid Program;

b. Another state's Medicaid Program;

c. [in Kentucky or any other state,] The Medicare Program;[,] or

d. [any] Other publicly funded health care program;

6. Fails [Failure] to comply with any Medicaid policy as specified in the Kentucky statutes or department's administrative regulations; [of the department; or]

7. Fails [Failure] to pay any outstanding debt owed to the department; or

8. Has engaged in an activity that would constitute an unacceptable practice.

(b) If enrollment or reenrollment [an application] is denied, the department shall consider reapplication only:

1. If the applicant corrects each deficiency that led to the denial; and

2. After the expiration of a period of exclusion imposed in accordance with 907 KAR 1:671, if applicable. [applicant may resubmit only upon correction of the factors leading to its denial, and after the expiration of any period of exclusion imposed in accordance with 907 KAR 1:671.]

(c) Notice of denial of enrollment or reenrollment The department shall send [A] written notice of [the] denial to an [shall be mailed to the] applicant's last known address and provide [contain the following:

1.] the reason for the denial [; and

2. The date in which the applicant may reapply for enrollment.]

(d) The denial shall be effective upon the date of the written notice.

(8)1. A provider may request limited enrollment for a period of time, not to exceed thirty (30) days, in an exceptional situation for emergency services provided to an eligible recipient [beneficiary].

2. The department shall make an enrollment determination regarding [of] the exceptional circumstances and notify the provider in writing of its decision.

(9) Recredentialing. A credentialed provider currently enrolled in the Medicaid Program shall submit to the department's recredentialing process three (3) years from the date of the provider's initial evaluation or last reevaluation.

Section 3. Required Provider Disclosure. (1) A provider [Providers and the fiscal agent] shall comply with the disclosure of information requirements contained in 42 C.F.R. 455.100 through 455.106 [455 Subpart B] and KRS 205.8477.

(2) Time and manner of disclosure. Information disclosed in accordance with 42 C.F.R. 455.100 through 455.106 [(a) The required provider information specified in 42 C.F.R. 455, Subpart B] shall be provided:

(a) [1.] Upon application for enrollment;

(b) [2.] Annually thereafter; and

(c) [3.] Within thirty-five (35) days of a written [the] request by the department or the United States Department of Health and Human Services.

[(b) The disclosure requirement may coincide with the certification or recertification periods except when the provider is certified other than on an annual basis.]

(3) If a [the] provider [or fiscal agent] fails to disclose [required] information required by 42 C.F.R. 455.100 through 455.106 within thirty-five (35) days of the department's written request [the time period specified], the department shall terminate the provider's [provider shall be terminated from] participation in the Medicaid Program in accordance with 907 KAR 1:671, Section 6 on the day following the last day for submittal of the required information [in

~~accordance with 907 KAR 1:671~~].

(4)(a) A [~~The~~] provider shall file an amended, signed ownership and disclosure form with the department within thirty-five (35) days following a change in [~~from the change in the following~~]:

1. [~~(a)~~] Ownership or control;

2. [~~(b)~~] The managing employee or management company; or

3. [~~(c)~~] A provider's federal tax identification number.

(b) [~~(5)~~] Failure to comply with the requirements of paragraph (a) of this subsection may result in termination from the Medicaid Program.

Section 4. Required Provider Documentation. (1) A [~~Each~~] provider shall maintain documentation of.

(a) Care, services, benefits, or supplies provided to an eligible recipient [~~beneficiary~~];

(b) The recipient's medical record or other provider file, as appropriate, which shall demonstrate that the care, services, benefits, or supplies [~~billed~~] for which the provider submitted a claim[,] were actually performed or delivered;

(c) The diagnostic condition necessitating the service performed or supplies provided; and

(d) Medical necessity as substantiated by appropriate documentation including an appropriate medical order.

(2) A provider who is reimbursed using a cost-based method shall maintain all:

(a) Fiscal and statistical records and reports [~~which are~~] used for the purpose of establishing rates of payment made in accordance with Medicaid policy;[;] and

(b) [~~all~~] Underlying books, records, documentation and reports that [~~which~~] formed the basis for the fiscal and statistical records and reports.

(3) All documentation required by this section shall be maintained by the provider for a minimum of five (5) years from the latter of:

(a) The date of final payment for services;

(b) The date of final cost settlement for cost reports; or

(c) The date of final resolution of disputes, if any.

(4) If any litigation, claim, negotiation, audit, investigation, or other action involving the records [~~has been~~] started before [~~the~~] expiration of the five (5) year retention period, the records shall be retained until the latter of:

(a) The completion of the action and resolution of all issues which arise from it; or

(b) The end of the regular five (5) year period.

Section 5. Incorporation by Reference. The following material is incorporated by reference:

(1) "Kentucky Application for Provider Evaluation and Re-evaluation, Form KAPER-1", December 2005 edition.

(2) "MAP-811, Non-credentialed Provider Application", July 2007 edition.

(3) "MAP-811, Individual Provider Application", July 2007 edition.

(4) "Dental Credentialing Form", July 2007 edition.

(5) The material incorporated by reference may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

GLENN JENNINGS, Commissioner
MARK BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a.m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes. This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Pursuant to KRS 205.560(12), this amendment implements use of the form and guidelines required by KRS 304.17A-545(5) and 806 KAR 17:480 for assessing the credentials of those applying for participation in the Medicaid program. Pursuant to Ky. Acts ch. 34 (SB 98 2007 GA), this amendment establishes a specific form for assessing the credentials of dentists applying for participation in the Medicaid program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 205 560(12), 304.17A-545(5), and 806 KAR 17:480 in recognizing a uniform provider credentialing and application process. This amendment is also required by Ky. Acts Chapter 34 (SB 98 2007 GA) to establish a specific form for assessing the credentials of dentists applying for participation in the Medicaid program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by complying with KRS 205.560(12), 304.17A-545(5), 806 KAR 17:480, and Ky. Acts ch. 34 (SB 98 2007 GA) in recognizing a uniform provider credentialing and application process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by complying with KRS 205.560(12), 304 17A-545(5), 806 KAR 17:480, and Ky. Acts ch. 34 (SB 98 2007 GA) in recognizing a uniform provider credentialing and application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any entity desiring to be a Medicaid provider will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities applying for enrollment as a Medicaid provider shall be required to submit a KAPER-1 form in addition to a MAP-811. Dentists applying for participation as a Medicaid provider shall be required to submit a "Dental Credentialing" form in addition to a MAP-811.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An entity that applies for enrollment as a Medicaid provider would experience no significant costs associated with completing the required KAPER-1 or Dental Credentialing form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with this amendment will be eligible to receive Medicaid reimbursement if approved as participating providers. In addition, because this amendment complies with the provisions of SB 98 2007 GA, den-

tists benefit from the Cabinet's development of the new "Dental Credentialing Form", a form used in lieu of the KAPER-1 to streamline the process for assessing the credentials of dentists.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates no fiscal impact as a result of the amendment to this administrative regulation.

(b) On a continuing basis: DMS anticipates no fiscal impact as a result of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX of the Social Security Act and state matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees and it does not directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each applicant for participation as a credentialed provider in the Medicaid Program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.560(12), which provides that the Medicaid program use the form and guidelines established by KRS 304.17A-545(5) and 806 KAR 17:480 for assessing the credentials of those applying for participation in the Medicaid program. This amendment is further required by Ky. Acts Chapter 34 (SB 98 2007 GA) which requires that the Medicaid program develop a specific form and guidelines for assessing the credentials of dentists applying for participation in the Medicaid program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? Implementation of this amendment will not result in any additional costs during the first year.

(d) How much will it cost to administer this program for subsequent years? Implementation of this amendment will not result in any additional costs during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

STATEMENT OF EMERGENCY
907 KAR 3:005E

(1) This emergency administrative regulation is being promulgated to establish Medicaid coverage of the following drugs as a separate reimbursable service under the physicians' program

(a) Long acting injectable risperidone; or

(b) An injectable, infused or inhaled drug or biological that is not typically self-administered, not excluded as a noncovered immunization or vaccine, and requires special handling, storage, shipping, dosing, or administration.

(2) This action must be taken on an emergency basis to protect Medicaid recipient health, safety, and welfare.

(a) Risperidone is an atypical antipsychotic medication, the coverage of which the Medicaid program believes is necessary for treatment of schizophrenia or a bipolar disorder.

(b) Coverage of the various drugs with special handling requirements via the physician program is necessary as previous coverage was restricted to the pharmacy program resulting in recipients procuring the drugs from pharmacists and delivering them to the physician's office. This practice posed a risk of potential contamination of the drugs as well as possible waste of any drug due to recipient mishandling.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Emergency Amendment)

907 KAR 3:005E. Physicians' services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 415.152, 415.174, 415.184, 440.50, 45 C.F.R. 160, 164, 42 U.S.C. 1320 - 1320d -8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205 520(3), 205 560(1)

EFFECTIVE: July 12, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Biologicals" means the definition of biologicals pursuant to 42 U.S.C. 1395x(t)(1).

(2) "Common practice" means a contractual partnership in which a physician assistant administers health care services under the employment and supervision of a physician.

(3) [(2)] "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022,

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3 090,

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160, or

4. The Model Waiver II Program in accordance with 907 KAR 1:595; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(4) [~~(3)~~] "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(5) [~~(4)~~] "Department" means the Department for Medicaid Services or its designee.

(6) [~~(5)~~] "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(7) "Drug" means the definition of drugs pursuant to 42 U S C. 1395x(t)(1).

(8) [~~(6)~~] "Emergency care" means.

(a) Covered inpatient and outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard, or

(b) Emergency ambulance transport.

(9) [~~(7)~~] "EPSDT" means early and periodic screening, diagnosis, and treatment.

(10) [~~(8)~~] "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U S C. 1396a(a)(10)(A)(i)(I) and 1396u - 1;

2. 42 U.S.C. 1396a(a)(52) and 1396r - 6 (excluding children eligible under Part A or E of title IV, codified as 42 U S C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S C. 1396a(l)(1)(B);

4. 42 U.S C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C. 1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6 Has a designated package code of 2, 3, 4, or 5.

(11) [~~(9)~~] "Global period" means occurring during the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(12) [~~(10)~~] "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive Kentucky Transitional Assistance Program (K-TAP) benefits and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP benefits and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP benefits and are deprived due to unemployment,

(b) Individuals aged sixty-five (65) and over who receive supplemental security income (SSI) benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive state supplementations program (SSP) benefits and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI benefits and.

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1.022, or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1.022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1.022; or

(h) Pregnant women.

(13) [~~(11)~~] "Graduate medical education program" or "GME Program" means one (1) of the following:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined in 42 C.F.R. 413.75(b).

(14) [~~(12)~~] "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires little additional resources; or

(b) Is clinically integral to the performance of the primary procedure.

(15) [~~(13)~~] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time

(16) [~~(14)~~] "KenPAC" means the Kentucky Patient Access and Care System.

(17) [~~(15)~~] "KenPAC PCP" means a Medicaid provider who is enrolled as a primary care provider in the Kentucky Patient Access and Care System.

(18) [~~(16)~~] "Locum tenens" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(19) [~~(17)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(20) [~~(18)~~] "Medical resident" means one (1) of the following:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:

1. An individual with a:

a. Temporary license;

b. Resident training license; or

c. Restricted license; or

2. An unlicensed graduate of a foreign medical school.

(21) [~~(19)~~] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(22) [~~(20)~~] "Optimum choices" means a benefit plan for an individual who

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR

1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, 0, or 1.

(23) [~~(21)~~] "Other licensed medical professional" means a health care provider other than a physician, physician assistant, advanced registered nurse practitioner, certified registered nurse anesthetist, nurse midwife, or registered nurse who has been approved to practice a medical specialty by the appropriate licensure board.

(24) [~~(22)~~] "Physician assistant" is defined in KRS 311.840(3).

(25) [~~(23)~~] "Screening" means the evaluation of a recipient by a physician to determine the presence of a disease or medical condition and if further evaluation, diagnostic testing or treatment is needed.

(26) "Special handling, storage, shipping, dosing or administration requirements" means one (1) or more of the following requirements as described in the dosing and administration section of a medication's package insert:

(a) Refrigeration of the medication;

(b) Protection from light until time of use;

(c) Overnight delivery;

(d) Avoidance of shaking or freezing; or

(e) Other protective measures not required for most orally-administered medications.

(27) [~~(24)~~] "Supervising physician" is defined in KRS 311.840(4)

(28) [~~(25)~~] "Supervision" is defined in KRS 311.840(6).

(29) [~~(26)~~] "Timely filing" means receipt of a claim by Medicaid:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(30) [~~(27)~~] "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using a CPT code designated for reporting unlisted procedures or services

Section 2. Conditions of Participation. (1) A participating physician shall be licensed as a physician in the state in which the medical practice is located.

(2) A participating physician shall comply with the terms and conditions established in the following administrative regulations:

(a) 907 KAR 1:005, Nonduplication of payments;

(b) 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions, and

(c) 907 KAR 1.672, Provider enrollment, disclosure, and documentation for Medicaid participation.

(3) A participating physician shall comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S C. 1320d to 1320d - 8 and 45 C.F.R. Parts 160 and 164.

(4) A participating physician shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of that decision prior to the delivery of service. If the provider accepts the recipient, the provider:

(a) Shall bill Medicaid rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Medicaid if the physician informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

1. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

2. Incorrect billing procedures, including incorrect bundling of services,

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:

(a) Medically necessary;

(b) [~~Effective August 1, 2006,~~] Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and

(d) Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:

(a) A service provided by a medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;

(b) A service provided by a locum tenens physician who provides direct physician contact;

(c) A radiology service, imaging service, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;

(d) The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;

(e) A preauthorized sleep disorder service if provided in a physician operated and supervised sleep disorder diagnostic center;

(f) A telehealth consultation provided by a consulting medical specialist in accordance with 907 KAR 3:170; or

(g) A service provided by a physician assistant in accordance with Section 7 of this administrative regulation.

(3) A service provided by an individual who meets the definition of other licensed medical professional shall be covered if:

(a) The individual is employed by the supervising physician,

(b) The individual is licensed in the state of practice; and

(c) The supervising physician has direct physician contact with the recipient.

Section 4. Service Limitations. (1) A covered service provided to a recipient placed in "lock-in" status in accordance with 907 KAR 1:677 shall be limited to a service provided by the lock-in provider unless:

(a) The service represents emergency care; or

(b) The recipient has been referred by the "lock-in" provider.

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 1:034, Sections 3 through 5.

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) Except for the following, a drug administered in the physician's office shall not be covered as a separate reimbursable service through the physician program:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device; or

(i) An implantable contraceptive device.

(j) Long acting injectable risperidone, or

(k) An injectable, infused or inhaled drug or biological that is,

a. Not typically self-administered;

b. Not excluded as a noncovered immunization or vaccine, and

c. Requires special handling, storage, shipping, dosing or administration.

(5) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F, shall be covered within the scope and limitations of the federal regulations.

(6) Coverage for a service designated as a psychiatry service CPT code and provided by a physician other than a board certified or board eligible psychiatrist shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(7)(a) Coverage for an evaluation and management service

shall be limited to one (1) per physician, per recipient, per date of service.

(b) Coverage for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per year, per diagnosis, per physician, except as established in paragraph (c) of this subsection.

(c) An evaluation and management service with a corresponding CPT of 99214 or 99215 exceeding the limit established in paragraph (b) of this subsection shall be covered if prior authorized by the department.

(8) Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(9)(a) An anesthesia service shall be covered if administered by an anesthesiologist who remains in attendance throughout the procedure.

(b) Except for an anesthesia service provided by an oral surgeon, an anesthesia service, including conscious sedation, provided by a physician performing the surgery shall not be covered.

(10) The following services shall not be covered:

(a) An acupuncture service;

(b) Allergy immunotherapy for a recipient age twenty-one (21) years or older,

(c) An autopsy;

(d) A cast or splint application in excess of the limits established in 907 KAR 3:010, Section 4(5) and (6);

(e) Except for therapeutic bandage lenses, contact lenses;

(f) A hysterectomy performed for the purpose of sterilization;

(g) Lasik surgery;

(h) Paternity testing;

(i) A procedure performed for cosmetic purposes only;

(j) A procedure performed to promote or improve fertility;

(k) Radial keratotomy;

(l) A thermogram;

(m) An experimental service which is not in accordance with current standards of medical practice; or

(n) A service which does not meet the requirements established in Section 3(1) of this administrative regulation.

Section 5. Prior Authorization Requirements and KenPAC Referral Requirements. (1) The following procedures shall require prior authorization by the department

(a) Magnetic resonance imaging (MRI);

(b) Magnetic resonance angiogram (MRA);

(c) Magnetic resonance spectroscopy;

(d) Positron emission tomography (PET);

(e) Cineradiography/videoradiography;

(f) Xeroradiography;

(g) Ultrasound subsequent to second obstetric ultrasound;

(h) Myocardial imaging;

(i) Cardiac blood pool imaging;

(j) Radiopharmaceutical procedures;

(k) Gastric restrictive surgery or gastric bypass surgery;

(l) A procedure that is commonly performed for cosmetic purposes;

(m) A surgical procedure that requires completion of a federal consent form; or

(n) An unlisted procedure or service

(2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(3) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service, or

(b) A radiology procedure if the recipient has a cancer or transplant diagnosis code.

(4) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner may request prior authorization from the department.

(5) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner shall request prior authorization by mailing or faxing:

(a) A written request to the department with sufficient information to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and

(b) If applicable, any required federal consent forms.

(6) Except for a service specified in 907 KAR 1:320, Section 10(3)(a) through (q), a referral from the KenPAC PCP shall be required for a recipient enrolled in the KenPAC Program.

Section 6. Therapy Limits. (1) Speech therapy shall be limited to:

(a) Ten (10) visits per twelve (12) months for a recipient of the Global Choices benefit plan;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan.

(2) Physical therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit plan,

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit plan; or

2. Optimum Choices benefit plan.

(3) Occupational therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit plan;

(b) Thirty (30) visits per twelve (12) months for a recipient of the:

1. Comprehensive Choices benefit plan; or

2 Optimum Choices benefit plan

(4) The therapy limits established in subsection (1) through (3) of this section shall be over-ridden if the department determines that additional visits beyond the limit are medically necessary.

(5)(a) To request an override

1. The provider shall telephone or fax the request to the department; and

2. The department shall review the request in accordance with the provisions of 907 KAR 3.130 and notify the provider of its decision.

(b) An appeal of a denial regarding a requested override shall be in accordance with 907 KAR 1:563.

(6) The limits established in subsections (1), (2), and (3) of this section shall not apply to a recipient under twenty-one (21) years of age. Except for recipients under age twenty-one (21), prior authorization is required for each visit that exceeds the limit established in subsection (1) through (3) of this section.

Section 7. Physician Assistant Services. (1) With the exception of a service limitation specified in subsections (2) or (3) of this section, a service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section 3(1) of this administrative regulation;

(b) The service is within the legal scope of certification of the physician assistant;

(c) The service is billed under the physician's individual provider number with the physician assistant's number included; and

(d) The physician assistant complies with:

1. KRS 311.840 to 311.862, and

2. Sections 2(2) and (3) of this administrative regulation.

(2) A same service performed by a physician assistant and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

(a) A physician noncovered service specified in Section 4(10) of this administrative regulation,

(b) An anesthesia service;

(c) An obstetrical delivery service; or

(d) A service provided in assistance of surgery.

Section 8. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR

1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVE BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the participation requirements for physicians and the coverage criteria for services provided by physicians to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations for the provision of medically necessary physician services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes coverage of administration of a long acting injectable risperidone or an injectable, infused or inhaled drug or biological that is not typically self-administered, not excluded as a noncovered immunization or vaccine and requires special handling, storage, shipping, dosing or information; and increases evaluation and management service coverage from 1 per recipient per year to 2 per recipient per year with additional coverage contingent upon department prior authorization.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure or enhance recipient access to physician care via the department's coverage structure and to promote recipient health, safety and welfare by reimbursing for administration of drugs or biologicals requiring special handling or similar.

(c) How the amendment conforms to the content of the authorizing statutes. The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Reimbursement policies pertaining to covered Medicaid services impacts all physicians enrolled in the Kentucky Medicaid program (approximately 15,000).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than restrict coverage, the amendments favor providers, enhancing coverage. The amendment extends coverage to administration of certain drugs and biologicals which require special handling or similar and expands evaluation and management service per recipient per year coverage from 1 to 2 with additional allowed if prior authorized by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated, the amendments enhance coverage rather than restrict.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) The amendments enhance coverage rather than restrict coverage. The amendments extend coverage to administration of certain drugs and biologicals which require special handling or similar and expands evaluation and management service per recipient per year coverage from 1 to 2 with additional allowed if prior authorized by the department.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. The Department for Medicaid Services (DMS) anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(b) On a continuing basis. The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. DMS anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all physicians enrolled in the Medicaid program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 447 Subpart B.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

STATEMENT OF EMERGENCY
907 KAR 3:010E

This emergency administrative regulation is being promulgated to establish a reimbursement rate for physician office visits that occur beyond traditional working hours; to increase reimbursement for delivery-related anesthesia services; to increase the nondelivery related anesthesia dollar conversion factor; and to establish reimbursement for the following drugs via the physicians' program: long acting injectable risperidone; or an injectable, infused or inhaled drug or biological that is not typically self-administered, not excluded as a noncovered immunization or vaccine, and requires special handling, storage, shipping, dosing, or administration. These actions must be taken on an emergency basis to protect Medicaid recipients' health, safety, and welfare. The extended office hours' reimbursement combats inappropriate and costly emergency room utilization when physician office care is more appropriate; thus, enabling the Medicaid Program to better utilize resources available to it and for recipients. Reimbursement for risperidone is critical as this atypical antipsychotic medication is necessary for treatment of schizophrenia or a bipolar disorder. Reimbursement of various drugs with special handling requirements via the physician program is necessary as previous reimbursement was restricted to the pharmacy program resulting in recipients procuring the drugs from pharmacists and delivering them to physician's offices. This practice posed a risk of potential contamination of the drugs as well as possible waste of any drug due to recipient mishandling. This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Emergency Amendment)

907 KAR 3:010E. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 42 C.F.R. 440 50, 447 Subpart B, 42 U.S.C. 1396a, b, c, d, s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205 560

EFFECTIVE: July 12, 2007

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code which may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(3) "Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.

(4) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Established patient" means one who has received professional services from the provider within the past three (3) year period.

(7) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(8) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires few additional physician resources; or

(b) Is clinically integral to the performance of the primary procedure.

(9) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(10) "Locum tenens" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(11) "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(12) "Medicaid Physician Fee Schedule" means a list of current reimbursement rates for physician services established by the department in accordance with Section 3 of this administrative regulation.

(13) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(14) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(15) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one an-

other during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(16) "Physician assistant" is defined in KRS 311.840(3)

(17) "Physician group practice" means two (2) or more licensed physicians who have enrolled both individually and as a group and share the same Medicaid group provider number.

(18) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(19) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code which takes into consideration the physician's work, practice expense and liability insurance.

(20) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(21) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(22) "Usual and customary charge" means the uniform amount which a physician charges the general public for a specific medical procedure or service.

Section 2. Reimbursement. (1) Reimbursement for a covered service shall be made to:

(a) The individual participating physician; or

(b) A physician group practice enrolled in the Kentucky Medicaid Program.

(2) Except as provided in subsections (3) to (9) [~~(8)~~] of this section, reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with Section 3 of this administrative regulation.

(3) If there is not an established fee in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

(4) Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

(5) If cost-sharing is required for a service to a recipient, the cost-sharing provisions established in 907 KAR 1:604 shall apply.

(6) Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as follows:

(a) A second anesthesia service provided by a provider to a recipient on the same date of service and reported by the addition of the two (2) digit modifier twenty-three (23) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;

(b) A professional component of a service reported by the addition of the two (2) digit modifier twenty-six (26) shall be reimbursed at the product of:

1. The Medicare value assigned to the physician's work; and

2. The dollar conversion factor specified in Section 3(2) of this administrative regulation;

(c) A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

1. The Medicare value assigned to the practice expense involved in the performance of the procedure; and

2. The dollar conversion factor specified in Section 3(2) of this administrative regulation;

(d) A bilateral procedure reported by the addition of the two (2) digit modifier fifty (50) shall be reimbursed at 150 percent of the amount assigned to the CPT code;

(e) An assistant surgeon procedure reported by the addition of the two (2) digit modifier eighty (80) shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon;

(f) A procedure performed by a physician acting as a locum tenens for a Medicaid-participating physician reported by the addition of the two (2) character modifier Q six (6) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;

(g) An evaluation and management telehealth consultation service provided by a consulting medical specialist in accordance with 907 KAR 3:170 and reported by the two (2) letter modifier "GT" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code; and

(h) A level II National HCPCS modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

(7) Except for a service specified in paragraphs (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:029.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital or emergency room visit or in addition to a laboratory test.

(8) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital or emergency room visit if performed by the same provider.

(9) The department shall reimburse a flat rate of seventy-two (72) dollars per office visit for an office visit occurring after 5 p.m. Monday through Friday or occurring after 12 p.m. on Saturday or anytime Sunday.

Section 3. Reimbursement Methodology. (1) Except for [~~With the exception of~~] a service specified in subsections (3) through (7) [~~(6)~~] of this section:

(a) The rate for a nonanesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The flat rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the actual [~~average~~] amount of time units spent on that specific procedure (designated as Z).

[~~1. The average time units shall be a static number based upon average time units obtained by the department.~~

~~2. The formula for obtaining a covered anesthesia service's flat rate shall be X multiplied by (Y plus Z).~~

~~3. The flat rate for a covered anesthesia service shall not exceed the rate that was in effect on June 1, 2006 by more than twenty (20) percent.~~]

(2) The dollar conversion factor shall be:

(a) Fourteen (14) dollars and eighty-five (85) [~~Thirteen (13) dollars and eighty-six (86)~~] cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all nonanesthesia related services.

(3) For the following services, reimbursement shall be the lesser of:

(a) The actual billed charge;

(b) A fixed fee of three (3) dollars and thirty (30) cents for:

1. Administration of a pediatric vaccine to a Medicaid recipient under the age of twenty-one (21); or

2. Administration of a flu vaccine;

(c) For delivery-related anesthesia services, a fixed rate described as follows:

1. Vaginal delivery, $215 [~~$200~~];

2. Cesarean section, $335 [~~$320~~];

3. Neuroxial labor anesthesia for a vaginal delivery or cesarean section, $350 [~~$335~~];

4. Additional anesthesia for cesarean delivery following neu-

roxial labor anesthesia for vaginal delivery shall be twenty-five (25) dollars;

5. Additional anesthesia for cesarean hysterectomy following neuroxial labor anesthesia shall be twenty-five (25) dollars; or

(d) A fixed rate of twenty-five (25) dollars for anesthesia add-on services provided to a recipient under age one (1) and over age seventy (70).

(4) Except as established in subsection (5) or (7)(c) of this section, the department shall reimburse the following drugs [~~A covered drug specified in 907 KAR 3:005, Section 4(4)(a) through (i) shall be reimbursed~~] at the lesser of the[~~:~~ ~~(a)~~] actual billed charge[~~,~~] or [~~(b)~~] average wholesale price (AWP) minus ten (10) percent if the drug is administered in a physician's office.

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection.

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused or inhaled drug or biological that is

a. Not typically self-administered;

b. Not excluded as a noncovered immunization or vaccine; and

c. Requires special handling, storage, shipping, dosing or administration.

(5) If long acting injectable risperidone is provided to an individual covered under both Medicaid and Medicare and administered by a physician employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall provide reimbursement at the same rate it reimburses for these drugs provided to a Medicaid recipient, except that the department shall reduce reimbursement by the amount of the third party obligation.

(6) [~~(5)~~] Reimbursement for a covered service provided by a physician assistant shall be

(a) Made to the employing physician, or

(b) Included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, rural health clinic, or comprehensive care center.

(7)[~~(6)~~](a) Except for an item identified in paragraph (b) or (c) of this subsection, reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this section and Section 4 of this administrative regulation.

(b) Except as established in paragraph (c) of this subsection, the department shall reimburse the following drugs at the lesser of the actual billed charge or average wholesale price (AWP) minus ten (10) percent if the drug is administered in a physician's office by a physician assistant:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused or inhaled drug or biological that is:

a. Not typically self-administered;

b. Not excluded as a noncovered immunization or vaccine; and

c. Requires special handling, storage, shipping, dosing or administration.

(c) If long acting injectable risperidone is provided to an individual covered under both Medicaid and Medicare and administered by a physician assistant employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall provide reimbursement at the same rate it reimburses for these drugs provided to a Medicaid recipient, except that the department shall reduce reimbursement by the amount of the third party obligation. [~~If provided by a physician assistant, an injectable antibiotic, antineoplastic chemotherapy agent or a contraceptive identified in 907 KAR 3:005, Section 4(4)(a) through (i), shall be reimbursed at the lesser of the:~~

~~1. Actual billed charge, or~~

~~2. Average wholesale price (AWP) of the drug minus ten (10) percent.~~]

Section 4. Reimbursement Limitations. (1)(a) With the exception of chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 [~~representing medical decision making of moderate or high complexity for an established patient~~] shall be limited to two (2) [~~one (1) evaluation and management service of either moderate complexity or high complexity~~] per recipient[~~, per diagnosis,~~] per twelve (12) months.

(b) An additional evaluation and management service referenced in paragraph (a) of this subsection shall be covered if prior authorized by the department.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of this limit shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:

(a) Preoperative and postoperative visits,

(b) Administration of the anesthetic;

(c) Administration of fluids and blood incidental to the anesthesia or surgery;

(d) Postoperative pain management;

(e) Preoperative, intraoperative, and postoperative monitoring services; and

(f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance by epidural or spinal injection for the control of chronic pain shall be limited to three (3) injections per six (6) month period per recipient.

(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:

(a) A preoperative service,

(b) An intraoperative service;

(c) A postoperative service and follow-up care within:

1. Ninety (90) days following the date of major surgery; or

2. Ten (10) days following the date of minor surgery; and

(d) A preoperative consultation performed within two (2) days of the date of the surgery.

(5) Reimbursement for the application of a cast or splint shall be limited to two (2) per ninety (90) day period for the same injury or condition.

(6) Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:

(a) A temporary cast or splint, if applied by the same physician who performed the surgical procedure;

(b) The initial cast or splint applied during or following the surgical procedure; and

(c) A replacement cast or splint needed as a result of the surgical procedure if:

1. Provided within ninety (90) days of the procedure by the same physician; and

2. Applied for the same injury or condition.

(7) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows.

(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and

(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with

Section 3(1)(a) or (2)(b) of this administrative regulation.

(8) When performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(9) Reimbursement shall not be made for the cost of a vaccine that is administered by a physician.

Section 5. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 4 of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician employed by a state-supported school of medicine that is part of a university health care system that includes a.

(a) Teaching hospital; and

(b) Pediatric teaching hospital.

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall not exceed the physician's charge for the service provided and shall be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:

(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;

(b) Consistent with the requirements of 42 C.F.R. 447.325; and

(c) Made on a quarterly basis.

Section 6. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 2, 2007

FILED WITH LRC: July 12, 2007 at 10 a.m.

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement criteria for services provided by physicians to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement criteria for payment of medically necessary physician services to eligible Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes reimbursement for physician office visit care beyond typical working hours - extended hour rate is effective Monday through Friday 5 p.m. and weekends; increases evaluation and management service coverage from 1 per recipient per year to 2 per recipient per year with additional coverage contingent upon department prior authorization; inserts actual units of time into anesthesiology reimbursement as opposed to an average as was previously used; establishes reimbursement for administration of a long acting injectable risperidone or an injectable, infused or inhaled drug or biological that is not typically self-administered, not excluded as a noncovered immunization or vaccine and requires special handling, storage, shipping, dosing or information; increases delivery-related anesthesia reimbursement; and increases the dollar conversion factor for nondelivery related anesthesia from $13.86 to $15.20 cents.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure or enhance recipient access to physician care via the department's reimbursement/coverage structure, to promote care delivered in a physician's office versus an emergency room setting and to promote recipient health, safety and welfare by reimbursing for administration of drugs or biologicals requiring special handling or similar.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Reimbursement policies pertaining to covered Medicaid services impacts all physicians enrolled in the Kentucky Medicaid Program (approximately 15,000).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Rather than introducing mandates on providers, the amendments favor providers, enabling them to receive a flat rate for providing care beyond normal office hours, for administering certain drugs and biologicals which require special handling or similar, will be reimbursed for actual units of time for anesthesiology and for 2 as opposed to 1 evaluation and management service per recipient per year and will receive increased reimbursement for anesthesia services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Providers will receive an enhanced reimbursement for care provided beyond normal office hours, will be able to receive reimbursement for 2 rather than 1 evaluation and management service per recipient per year, will be reimbursed for administration of drugs or biologicals requiring special handling or similar, will be reimbursed for actual units of anesthesia service time, and will receive increased reimbursement for anesthesia services. The amendments enhance provider reimbursement rather than cost providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments enhance provider reimbursement rather than cost providers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an

emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually

(b) On a continuing basis: The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time, therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all physicians enrolled in the Medicaid Program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 447 Subpart B.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually.

(d) How much will it cost to administer this program for subsequent years? The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

STATEMENT OF EMERGENCY
907 KAR 3:090E

This emergency administrative regulation is being promulgated to establish the consumer-directed services option created by KRS 205.5606. This initiative allows individuals to choose who provides their nonmedical waiver services resulting in greater freedom of choice, flexibility, and control over their supports and services. Members can choose to direct all or some of their nonmedical waiver services. This action must be taken on an emergency basis to meet a deadline for implementation of a requirement established by state law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler. The ordinary administrative regulation differs from the emergency administrative regulation regarding Class III incident reporting provisions

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Emergency Amendment)

907 KAR 3:090E. Acquired brain injury services.

RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 C.F.R. 441 Subpart G, 455 Subpart B, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1),

205.520(3)

EFFECTIVE: July 12, 2007

NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services. The purpose of acquired brain injury waiver services is to rehabilitate and retrain an individual with an acquired brain injury to reenter and function independently within a community, given the community's existing resources. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. Therefore, this administrative regulation also implements a consumer-directed option program pursuant to KRS 205.5606

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(3) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(4) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service for an individual who has acquired a brain injury to his or her central nervous system of the following nature:

(a) Injury from a physical trauma;

(b) Damage from anoxia or a hypoxic episode, or

(c) Damage from an allergic condition, toxic substance or another acute medical incident.

(5) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351;

(b) Submitted to the department:

1. For a level of care determination; and

2. No less than every twelve (12) months thereafter. [~~"Assessment of needs and plan of care" means a written assessment and individualized plan submitted on a MAP-011 form that is developed by:~~

~~(a) An ABI recipient and legal representative if appointed,~~

~~(b) A case manager;~~

~~(c) An ABI service provider; and~~

~~(d) Others as designated by the ABI recipient.~~]

(6) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(7) "BISB" [~~"BISU"~~] or "brain injury service branch[~~unit~~]" means the brain injury service branch [~~unit in the Division of Mental Health, Department for Mental Health and Mental Retardation~~].

(8) "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care

(9) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc

(10) "Budget allowance" is defined by KRS 205.5605(1)

(11) "Case manager" means an individual who manages the overall development and monitoring of a recipient's [~~assessment of needs and~~] plan of care

(12) "Consumer" is defined by KRS 205.5605(2).

(13) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waiver that allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(14) "Covered services and supports" is defined by KRS 205.5605(3).

(15)[~~(9)~~] "Crisis prevention and response plan" means a plan developed to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

(16)[~~(10)~~] "DCBS" means the Department for Community Based Services.

(17)[~~(11)~~] "Department" means the Department for Medicaid Services or its designee.

(18)[~~(12) "DMHMR" means the Department for Mental Health and Mental Retardation Services.~~]

~~(13)~~] "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, including:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(19)[~~(14)~~] "Human rights committee" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(20)[~~(15)~~] "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI's recipient's plan of care consisting of:

(a) The ABI recipient and legal representative if appointed;

(b) A chosen ABI service provider;

(c) A case manager; or

(d) Others as designated by the ABI recipient.

(21) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

(22)[~~(16)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(23) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(24)[~~(17)~~] "Occupational therapist" is defined by [~~means an individual who is licensed in accordance with~~] KRS 319A.010(3).

(25) "Occupational therapy assistant" is defined by KRS 319A.010(4).

(26) "Patient liability" means the financial amount an individual is required to contribute towards cost of care in order to maintain Medicaid eligibility

(27)[~~(18)~~] "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(28)[~~(19)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(29)[~~(20)~~] "Qualified mental health professional" is defined by [~~means a qualified mental health professional as defined in~~] KRS 202A.011(12)

(30) "Representative" is defined by KRS 205.5605(6).

(31)[~~(21)~~] "Speech therapist" means an individual who is licensed in accordance with KRS 334A.030.

(32) "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(33) "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and
(g) Budget allowance

(34)[(22)] "Transition plan" means a plan that is developed to aid an ABI recipient in exiting [transitioning] from the ABI program into the community.

Section 2. Non-CDO Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a consumer-directed option service, an ABI provider shall.

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeals process, and sanctions;

(b) Be certified by the department prior to the initiation of the service,

(c) Be recertified at least annually by the department; and

(d) Have an office within the Commonwealth of Kentucky.

(2) An ABI provider shall comply with:

(a) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation;

(b) 907 KAR 1:673, Claims processing, and

(c) 902 KAR 20:078, Operations and services; group homes.

(3) An ABI provider shall have a governing body that shall be:

(a) [Be] a legally-constituted entity within the Commonwealth of Kentucky; and

(b) [Be] responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an ABI recipient served by the agency

(4) An ABI provider shall.

(a) Unless participating in the CDO program, ensure that an ABI waiver service is not provided to an ABI recipient by a staff member of the ABI provider who has one (1) of the following blood relationships to the ABI recipient:

1. Child;
2. Parent;
3. Sibling; or
4. Spouse;

(b) Not enroll an ABI recipient for whom the ABI provider [they] cannot meet the service needs, and

(c) Have and follow written criteria that complies with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 U S.C. 1320d to 1320d-8.

(6) An ABI provider shall meet the following requirements if responsible for the management of an ABI recipient's [recipient] funds:

(a) Separate accounting shall be maintained for each ABI recipient or for his or her interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the ABI recipient or legal representative on a quarterly basis; and

(c) The ABI recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

(7) An ABI provider shall have a written statement of its mission and values.

(8) An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of an ABI recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff,

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the ABI recipient at a reasonable time and with due regard for the ABI recipient's right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided, and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the ABI recipient.

(9) An ABI provider shall ensure the rights of an ABI recipient by:

(a) Making available a description of the rights and the means by which the rights may [they can] be exercised, including [which shall include]:

1. The right to time, space, and opportunity for personal privacy;

2. The right to retain and use personal possessions including clothing, and personal spending money [and cigarettes]; and

3. For a residential, personal care, companion or respite provider, the right to communicate, associate and meet privately with a person of the ABI recipient's choice, including:

a. The right to send and receive unopened mail; and

b. The right to private, accessible use of the telephone;

(b) Maintaining a grievance and appeals system; and

(c) [Establishing a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an individual with a brain injury,

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in rights issues,

2. Review and approve each assessment of need and plan of care with rights restrictions at a minimum of every six (6) months; and

3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that include highly restrictive procedures or contain rights restrictions;

(d) Establishing a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan,

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain rights restrictions; and

(e)] Complying with the Americans with Disabilities Act (28 C.F.R. Part 35).

(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided and all the records and reports shall be made available to the:

(a) [The] Department;

(b) [DMHMR or its designee,

(c) The] ABI recipient's selected case manager;

(c)[(d) The Commonwealth of Kentucky,] Cabinet for Health and Family Services, Office of Inspector General or its designee;

(d)[(e) The United States] General Accounting Office or its designee;

(e)[(f) The Commonwealth of Kentucky,] Office of the Auditor of Public Accounts or its designee;

(f)[(g) The Commonwealth of Kentucky,] Office of the Attorney General or its designee; or

(g)[(h) The] Centers for Medicare and Medicaid Services.

(11) An ABI provider shall cooperate with monitoring visits from monitoring agents.

(12) An ABI provider shall maintain a record for each ABI recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error which is initialed and dated; and

(d) Contain no blank lines in between each entry.

(13) A record of each ABI recipient who is served shall:

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol and abbreviations used in making a record entry;

(d) Contain the following specific information:

1. The ABI recipient's name, Social Security number and Medical Assistance [Medicaid] Identification Number (MAID);

2. An assessment summary relevant to the service area;

3. The [assessment of needs and] plan of care, MAP-109,

4. The crisis prevention and response plan that shall include:

a. A list containing emergency contact telephone numbers, and

b. The ABI recipient's history of any allergies with appropriate allergy alerts for severe allergies;

5. The transition plan that shall include:

a. Skills to be obtained from the ABI waiver program;

b. A listing of the on-going formal and informal community services available to be accessed, and

c. A listing of additional resources needed;

6. The training objective for any service which provides skills training to the ABI recipient;

7. The ABI recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

8. Legally-adequate consent for the provision of services or other treatment including a consent for emergency attention which shall be located at each service site;

9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification; and

10. [~~Original and~~] Current level of care certification;

(e) Be maintained by the provider in a manner to ensure the confidentiality of the ABI recipient's record and other personal information and to allow the ABI recipient or legal representative to determine when to share the information as provided by law;

(f) Be secured against [~~Have the safety from~~] loss, destruction or use by an unauthorized person ensured by the provider; and

(g) Be available to the ABI recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record

(14) An ABI provider shall:

(a)1. Ensure that each staff person and volunteer performing direct care or a supervisory function[~~, prior to providing direct care to a recipient,~~] has tested negatively for tuberculosis within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; and

2. Maintain documentation of each staff person's and, if a volunteer performs direct care or a supervisory function, the volunteer's negative tuberculosis test described in subparagraph 1 of this paragraph;

(b) For each potential employee and volunteer expected to perform direct care or a supervisory function, obtain:

1. Prior to the date of hire or date of service as a volunteer, the results of:

a. A criminal record check from the Administrative Office of the Courts and equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;

b. A nurse aide abuse registry check as described in 906 KAR 1:100, and

2. Within fourteen (14) days of the date of hire or date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470; [~~for each state in which the individual resided during the previous year:~~

~~1. Prior to employment; and~~

~~2. Prior to placement as a volunteer performing direct care staff or a supervisory function,~~]

(c) Not employ or permit [~~place~~] an individual to serve as a volunteer performing direct care or a supervisory function if the individual has [~~with~~] a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction;

(d) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [~~who~~] has a conviction of Driving Under the Influence (DUI) during the past year to transport an ABI recipient;

(e) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [~~who~~] has a conviction of abuse or sale of illegal drugs;

(f) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [~~who~~] has a conviction of abuse, neglect or exploitation;

(g) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [~~who~~] has a Cabinet for Health and Family Services finding of child [~~substantiated fraud,~~] abuse or neglect pursuant to the central registry [~~allegation~~];

(h) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual is listed on the nurse aide abuse registry;

(i) Evaluate the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter; and

(i)[~~(i)~~] Conduct periodic and regularly-scheduled supervisory visits of all professional and paraprofessional direct-service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient.

(15) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years of age or older;

2. Has a high school diploma or GED; and

3.a. Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

(16) An ABI provider shall establish written guidelines that address the health, safety and welfare of an ABI recipient, which shall include:

(a) Ensuring the health, safety and welfare of the ABI recipient;

(b) The prohibition of firearms and ammunition at a provider-service site,

(c) Maintenance of sanitary conditions;

(d) Ensuring each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(e) For a residential or structured day provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the ABI recipient not exceeding 120 [~~110~~] degrees Fahrenheit;

(f) Ensuring that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Unless the employee is a licensed or registered nurse, ensuring that staff administering medication:

1. Have specific training provided by a licensed medical professional and documented competency on cause and effect and proper administration and storage of medication which shall be provided by a nurse, pharmacist or medical doctor; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall.

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, and time if administered to the ABI recipient or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(h) Policy and procedures for on-going monitoring of medication administration as approved by the department.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill to be conducted and documented at least quarterly and for a residential setting, scheduled to include a time when an ABI recipient is asleep, and

(c) Mandate that the result of an evacuation drill be evaluated

and modified as needed.

(18) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department [~~DMHMR~~] prior to working independently with an ABI recipient which shall include:

1. Required [~~Sixteen (16) hours of~~] orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, 2000 hours of experience in serving a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy,

2. A psychologist or psychologist with autonomous functioning providing psychological services; or

3. A speech therapist providing speech therapy; or

4. A board certified behavior analyst; and

(f) [~~Ensure that an individual, prior to volunteering, meets the requirements specified in subsection (14)(a), (b), (c), (d) (e), (f) and (g) of this section, and~~

~~(g)~~] Ensure that prior to the date of service as a volunteer, an individual receive [~~volunteer, prior to working, receives~~] training which shall include:

1. Required [~~Sixteen (16) hours of~~] orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;

2. Orientation to the agency;

3. A confidentiality statement; and

4. Individualized instruction on the needs of the ABI recipient to whom the volunteer will provide services.

(19) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each ABI recipient served by the provider.

(20) A case management provider shall:

(a) Establish a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an individual with a brain injury;

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in human rights issues;

2. Review and approve each plan of care with human rights restrictions at a minimum of every six (6) months; and

3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that include highly restrictive procedures or contain human rights restrictions; and

(b) Establish a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:

1. Within thirty (30) days of the recipient's admission into the ABI program;

2. Annually thereafter; and

3. Upon discharge.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program[~~, an individual shall~~]:

(a) An individual shall be twenty-one (21) to sixty-five (65) years of age with an ABI that involves cognition, behavior, or a physical function which necessitates supervised and rehabilitative services;

(b) An individual shall be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;

(c) An application packet containing the following shall be submitted by a support broker on behalf of the applicant [~~Submit an application packet to the department which shall contain~~]:

1. A copy of the allocation letter [~~received from BISU~~];

2. An Assessment form - MAP-351 [~~of Needs and Plan of Care form - MAP-011~~],

3. A statement for the need for long term care services which shall be signed and dated by a physician on an Acquired Brain Injury Waivers Services form - MAP-10 [~~Program Physician Certification form - MAP-4099~~];

4. A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350; [~~and~~]

5. A Plan of Care form - MAP-109; and

6. The ABI Recipient's Admission Discharge DCBS Notification Form - MAP 24C;

(d) An individual shall [~~MAP-552K, Department for Community Based Services Notice of Availability of Income for Long Term Care/Waiver Agency/Hospice form;~~

~~(d) Submit the following information to the department:~~

~~1. An ABI Waiver Services Program Applicant/Recipient Memorandum of Understanding form - MAP-4096,~~

~~2. The ABI Recipient's Admission Discharge DCBS Notification form - MAP-24B; and~~

~~3. A Freedom of Choice of Home and Community Based Waiver Service Providers form - MAP-4102,~~

~~(e)~~] Receive notification of potential funding allocated for ABI services for the individual in accordance with Section 7 of this administrative regulation;

(e) An individual shall[~~(f)~~] meet the patient status criteria for nursing facility services established in 907 KAR 1:022 including nursing facility services for a brain injury;

(f) An individual shall[~~(g)~~] meet the following conditions:

1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;

2. Be medically stable;

3. Meet Medicaid eligibility requirements established in 907 KAR 1:605;

4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential, and

5. Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale; and

(g) An individual shall[~~(h)~~] receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of time.

(3) The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The [~~assessment of needs and~~] plan of care goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

(f) The cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(4) An ABI waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disability, or

(b) Receiving a service in another home and community based waiver program.

(5) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI waiver program.

(6) To maintain eligibility as an ABI recipient:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(b) A reevaluation shall be conducted at least once every twelve (12) [~~six (6)~~] months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(7) An ABI case management provider shall notify the local DCBS office, BISB, [~~BISU~~] and the department via an ABI Recipient's Admission Discharge DCBS Notification form - MAP 24C [~~MAP-24B~~], if the ABI recipient is:

(a) Admitted to the ABI waiver program;

(b) Terminated from the ABI waiver program;

(c)[~~(b)~~] Temporarily discharged;

(d)[~~(c)~~] Admitted to a nursing facility; or

(e)[~~(d)~~] Changing the primary provider.

(8) The department may exclude an individual from receiving an ABI waiver service for whom the aggregate cost of ABI waiver service would reasonably be expected to exceed the cost of a nursing facility service.

(9) Involuntary termination and loss of an ABI waiver program placement shall be in accordance with 907 KAR 1.563 and shall be initiated if:

(a) An individual fails to initiate an ABI waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the recipient or legal representative;

2. Copies of letters to providers; and

3. Copies of letters from providers;

(b) An ABI recipient or legal representative fails to access the required service as outlined in the [~~assessment of need and~~] plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers; and

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. For an individual who resides in a facility, the length of the transition plan and contingent upon continued active participation in the transition plan;

(c) An ABI recipient changes residence outside the Commonwealth of Kentucky; or

(d) An ABI recipient does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(e) An ABI recipient is no longer able to be safely served in the community; or

(f) The ABI recipient has reached maximum rehabilitation potential.

(10) Involuntary termination of a service to an ABI recipient by an ABI provider shall require:

(a) Simultaneous notice to the department [~~BISU~~], the ABI recipient or legal representative and the case manager at least thirty (30) [~~ten (10)~~] days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

1. Provide the ABI recipient with the name, address and telephone number of each current ABI provider in the state;

2. Provide assistance to the ABI recipient in making contact with another ABI provider;

3. Arrange transportation for a requested visit to an ABI provider site;

4. Provide a copy of pertinent information to the ABI recipient or legal representative;

5. Ensure the health, safety and welfare of the ABI recipient until an appropriate placement is secured; and

6. Provide assistance to ensure a safe and effective service transition.

(11) Voluntary termination and loss of an ABI waiver program placement shall be initiated if an ABI recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to the department [~~DMHMR~~].

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The ABI recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Covered Services. (1) An ABI waiver service shall:

(a) Be prior-authorized by the department; and

(b) Be provided pursuant to the [~~assessment of needs and~~] plan of care.

(2) The following services shall be provided to an ABI recipient by an ABI waiver provider:

(a) Case management services, which shall:

1. Include initiation, coordination, implementation, and monitoring of the assessment, evaluation, intake and eligibility process;

2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;

3. Assist an ABI recipient and the interdisciplinary team to develop and update the [~~assessment of needs and~~] plan of care;

4. Include monitoring of the delivery of services and the effectiveness of the [~~assessment of needs~~] and plan of care, which shall:

a. Be initially developed with the ABI recipient and legal representative if appointed prior to the level of care determination;

b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

c. Include the ABI Plan of Care [~~Modification~~] form - MAP-109 [~~MAP-4098~~] being sent to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;

5. Include a transition plan that shall be developed within the first thirty (30) days of service and updated as changes or recertification occurs, and shall include.

a. The skills or service obtained from the ABI waiver program upon transition into the community; and

b. A listing of the community supports available upon the transition;

6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;

7. Be provided by a case manager who:

a.(i) Is a registered nurse;

(ii) Is a licensed practical nurse;

(iii) Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;

(iv) Is an independent case manager; or

(v) Is employed by a free-standing case management agency or an agency that provides another ABI service;

b. Has completed case management training that is consistent with the curriculum that has been approved by the department [~~DMHMR~~] prior to providing case management services;

c. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area,

d. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for

the change;

e. Shall provide a distribution of the crisis prevention and response plan, transition plan, [assessment of needs and] plan of care, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

f. [Shall not provide case management to more than forty (40) individuals at a given time irrespective of the payor source,

g. Shall not be a provider of other direct services,

h.] Shall provide twenty-four (24) hour telephone access to an ABI recipient and chosen ABI provider;

g [h.] Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be.

(i) Individual-specific; and

(ii) Updated as a change occurs and at each recertification;

h [i.] Shall assist an ABI recipient in planning resource use and assuring protection of resources;

i [k.] Shall conduct two (2) face-to-face meetings with an ABI recipient within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the ABI recipient's residence;

j [l.] Shall visit an ABI recipient who resides outside of his or her own or family's home on a monthly basis,

k [m.] Shall ensure twenty-four (24) hour availability of services; and

l [n.] Shall ensure that the ABI recipient's health, welfare and safety needs are met; and

[e. Shall be supervised by an individual who is:

(i) A certified case manager, a certified disability management specialist, a certified rehabilitation registered nurse, or a certified life care planner; and

(ii) Employed by or under contract with the case management provider agency; and]

8. Be documented by a detailed staff note which shall include:

a. The ABI recipient's health, safety and welfare;

b. Progress toward outcomes identified in the approved [assessment of needs and] plan of care;

c. The date of the service;

d Beginning and ending time; and

e. The signature, date of signature and title of the individual providing the service,

(b) Behavior programming which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the ABI recipient's behavior which shall include:

a. An evaluation of the impact of an ABI on cognition and behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Not be implemented by the behavior specialist who wrote the plan [Be implemented by another ABI provider];

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive,

f. Reflect the use of positive approaches; and

g. Prohibit the use of corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;

5 Include the monitoring of an ABI recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior, and

b. [The] Reports [of an ABI provider] involved in implementing the behavioral service plan;

6. Be provided by a behavior specialist who shall:

a.(i) Be a licensed psychologist;

(ii) Be a certified psychologist with autonomous functioning;

(iii) Be a licensed psychological associate;

(iv) Be a psychiatrist;

(v) Be a licensed clinical social worker;

(vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing; [or]

(vii) Be an advanced registered nurse practitioner (ARNP),

(viii) Be a board certified behavior analyst; or

(ix) Be a licensed professional clinical counselor; and

b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and

7. Be documented by a detailed staff note which shall include:

a. The date of the service,

b. The beginning and ending time, [and]

c. The signature, date and title of the behavioral specialist; and

d. A summary of data analysis and progress of the individual toward meeting goals of the services;

(c) Companion services which shall:

1. Include a nonmedical service or[,] supervision [or socialization];

2. Include assisting with but not performing meal preparation, laundry and shopping;

3. Include light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient;

4. Include services provided according to the approved [assessment of needs and] plan of care which are therapeutic and not diversional in nature;

5. Include accompanying and assisting an ABI recipient while utilizing transportation services;

6. Include documentation by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [assessment of needs] and plan of care;

b. The date of the service,

c. Beginning and ending time, and

d. The signature, date and title of the individual providing the service,

7. Not be provided to an ABI recipient who receives community residential services; and

8. Be provided by

a. A home health agency licensed and operating in accordance with 902 KAR 20:081;

b. A community mental health center licensed and operating in accordance with 902 KAR 20:091;

c. A group home licensed and operating in accordance with 902 KAR 20.078;

d. A community habilitation program certified by the department; or

e. A staffed residence certified by the department;

(d) Community residential services which shall.

1. Include twenty-four (24) hour supervision in:

a. A community mental health center licensed and operating in accordance with 902 KAR 20.091;

b. A staffed residence that is certified by the department which shall not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider; or

c. A group home which shall be licensed and operating in accordance with 902 KAR 20:078;

2. Not include the cost of room and board;

3 Be available to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting, or

c. Demonstrates behavior that may result in potential legal

problems if not ameliorated;

4. Utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

5. [~~If provided via a modular home, have 180 days October 1, 2003 to meet the modular home requirements,~~

~~6~~] Not utilize a motor home;

6 [~~7.~~] Provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the ABI recipient's health and comfort;

7.[~~8.~~] Provide assistance with daily living skills which shall include:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing,

g. Meal planning, grocery shopping and preparation;

h. Laundry;

i. Budgeting and financial matters;

j. Home care and cleaning,

k. Social skills training;

l. Reduction or elimination of a maladaptive behavior;

m. Instruction in leisure skills; and

n. Instruction in self medication;

8 [~~9.~~] Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved [~~assessment of needs and~~] plan of care;

9.[~~10.~~] Provide or arrange for transportation to services, activities and medical appointments as needed;

10 [~~11.~~] Include participation in medical appointments and follow-up care as directed by the medical staff; and

11 [~~12.~~] Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service,

c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service;

(e) Counseling services which:

1. Shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an ABI waiver service recipient's approved [~~assessment of needs and~~] plan of care;

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance abuse or chemical dependency treatment,

5. Shall include building and maintaining healthy relationships;

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include a group therapy service if the service is.

a. Provided to a maximum of twelve (12) ABI recipients no more than two (2) times a week not to exceed ninety (90) minutes; and

b. Included in the recipient's approved [~~assessment of needs and~~] plan of care for:

(i) Substance abuse or chemical dependency treatment;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

(iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A licensed psychologist;

c. A certified psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing;

g. An advanced registered nurse practitioner (ARNP); or

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist; or

j. A licensed professional clinical counselor; and

10 Shall be documented by a detailed staff note which shall include:

a. Progress toward the goals and objectives established in the plan of care;

b. The date of the service;

c.[~~b.~~] The beginning and ending time; and

d [~~c.~~] The signature, date of signature and title of the individual providing the service;

(f) Occupational therapy which shall be:

1. A physician-ordered evaluation of an ABI recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide an ABI recipient in the use of therapeutic, creative, and self-care activities to assist the ABI recipient in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by an occupational therapist or an occupational therapy assistant if supervised by a licensed occupation therapist in accordance with 201 KAR 28:130; and

5. Documented by a detailed staff note which shall include·

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service;

(g) Personal care services which shall:

1. Include the retraining of an ABI waiver service recipient in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;

2. Be provided by:

a. An adult day health care center licensed and operating in accordance with 902 KAR 20.066; or

b. A home health agency licensed and operating in accordance with 902 KAR 20.081,

3 Include the following activities of daily living

a Eating, bathing, dressing or personal hygiene;

b. Meal preparation; and

c. Housekeeping chores including bed-making, dusting and vacuuming;

4. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service; and

5 Not be provided to an ABI recipient who receives community residential services;

(h) A respite service which shall:

1. Be provided only to an ABI recipient unable to administer self-care;

2. Be provided by a:

a. Nursing facility,

b. Community mental health center;

c. Home health agency;
d. Group home agency;
e. Staffed residence agency; or
f. Community habilitation program;
3. Be provided on a short-term basis due to absence or need for relief of an individual providing care to an ABI recipient,
4. Be limited to 168 hours in a six (6) month period unless an individual's normal caregiver is unable to provide care due to a.
a. Death in the family;
b. Serious illness; or
c. Hospitalization;
5 Not be provided to an ABI recipient who receives community residential services;
6. Not include the cost of room and board if provided in a nursing facility; and
7. Be documented by a detailed staff note which shall include:
a. The date of the service,
b. The beginning and ending time; and
c. The signature, date of signature and title of the individual providing the service;
(i) Speech, hearing and language services which shall be.
1. A physician-ordered evaluation of an ABI recipient with a speech, hearing or language disorder;
2. A physician-ordered habilitative service in a specified amount and duration to assist an ABI recipient with a speech and language disability in obtaining the highest possible level of functioning;
3. Exclusive of maintenance or the prevention of regression,
4 Provided by a speech therapist; and
5. Documented by a detailed staff note which shall include:
a. Progress toward goals and objectives identified in the approved [~~assessment of needs and~~] plan of care;
b. The date of the service;
c. The beginning and ending time, and
d. The signature, date and title of the individual providing the service;
(j) Structured day program services which shall
1. Be provided by:
a. An adult day health care center which is certified by the department and licensed and operating in accordance with 902 KAR 20.066;
b. An outpatient rehabilitation facility which is certified by the department and licensed and operating in accordance with 902 KAR 20.190;
c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;
d. A community habilitation program certified by the department;
e. A sheltered employment program certified by the department; or
f. A therapeutic rehabilitation program certified by the department;
2. Be to rehabilitate, retrain and reintegrate an individual into the community;
3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person, unless an ABI recipient requires individualized special service;
4. Include the following services:
a. [~~Social skills training;~~
~~b.~~] Sensory or motor development;
b [~~c~~] Reduction or elimination of a maladaptive behavior;
c [~~d~~] Prevocational; or
d [~~e~~] Teaching concepts and skills to promote independence including:
(i) Following instructions;
(ii) Attendance and punctuality;
(iii) Task completion;
(iv) Budgeting and money management;
(v) Problem solving; or
(vi) Safety,
5. Be provided in a nonresidential setting;
6. Be developed in accordance with an ABI waiver service recipient's overall approved [~~assessment of needs and~~] plan of care,
7. Reflect the recommendations of an ABI waiver service recipient's interdisciplinary team;
8. Be appropriate:
a. Given an ABI waiver service recipient's age, level of cognitive and behavioral function and interest;
b. Given an ABI waiver service recipient's ability prior to and since his or her injury; and
c. According to the approved [~~assessment of needs and~~] plan of care and be therapeutic in nature and not diversional,
9. Be coordinated with occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient's [~~assessment of needs and~~] plan of care;
10. Provide an ABI waiver service recipient with an organized framework within which to function in his or her daily activities;
11. Entail frequent assessments of an ABI waiver service recipient's progress and be appropriately revised as necessary; and
12. Be documented by a detailed staff note which shall include:
a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;
b. The date of the service;
c. The beginning and ending time; and
d. The signature, date and title of the individual providing the service;
(k) Supported employment which shall be:
1. Intensive, ongoing services for an ABI recipient to maintain paid employment in an environment in which an individual without a disability is employed;
2. Provided by a:
a Supported employment provider;
b. Sheltered employment provider; or
c. Structured day program provider;
3. Provided one-on-one;
4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the ABI recipient's file;
5 [~~4.~~] Limited to forty (40) hours per week alone or in combination with structured day services;
6 [~~5.~~] An activity needed to sustain paid work by an ABI recipient receiving waiver services including supervision and training,
7.[~~6.~~] Exclusive of work performed directly for the supported employment provider, and
8 [~~7.~~] Documented by a time and attendance record which [~~with~~] shall include:
a Progress towards the goals and objectives identified in the plan of care;
b. The date of service;
c [~~b.~~] The beginning and ending time; and
d.[~~c.~~] The signature, date and title of the individual providing the service;
(l) Specialized medical equipment and supplies which shall.
1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;
2. Enable an ABI recipient to increase his ability to perform daily living activities or to perceive, control or communicate with the environment;
3. Be ordered by a physician and submitted on a Request for Equipment form - MAP-95 [~~form~~] and include three (3) estimates for vision and hearing;
4. Include equipment necessary to the proper functioning of specialized items;
5. Not be available through the department's durable medical equipment, vision or hearing programs;
6 Not be necessary for life support;
7. Meet applicable standards of manufacture, design and installation; and
8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient; or
(m) Environmental modifications which shall:
1. Be provided in accordance with applicable state and local building codes;
2. Be provided to an ABI recipient if:
a. Ordered by a physician;
b. Prior-authorized by the BISB [~~department~~],

c. Submitted on a Request for Equipment form - MAP-95 [~~form~~] by a case manager or support broker;

d. Specified in an ABI recipient's approved [~~assessment of needs and~~] plan of care;

e. Necessary to enable an ABI recipient to function with greater independence within his or her home; and

f. Without the modification, the ABI recipient would require institutionalization;

3. Not include a vehicle modification or an electronic monitoring system;

4. Be limited to no more than $2000 [~~$1000~~] for an ABI recipient in a twelve (12) [~~six (6)~~] month period; and

5. If entailing:

a. Electrical work, be provided by a licensed electrician; or

b. Plumbing work, be provided by a licensed plumber

Section 5. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:

(1) A stroke treatable in a nursing facility providing routine rehabilitation services;

(2) A spinal cord injury for [~~in~~] which there is no known or obvious injury to the intercranial central nervous system;

(3) Progressive dementia or another [~~mentally impairing~~] condition related to mental impairment that is of a chronic degenerative nature, including [~~such as~~] senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;

(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;

(5) A birth defect;

(6) Mental retardation without an etiology to an acquired brain injury; [~~or~~]

(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community; or

(8) Determination that the recipient has met his or her maximum rehabilitation potential.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents as follows:

(a) A Class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours;

4. Be reported to the guardian as directed by the guardian, and

5. Be retained on file at the provider and case management or support brokerage [~~manager~~] agency;

(b) A Class II incident which shall.

1. Be serious in nature;

2. Include a medication error;

3. Involve the use of a physical or chemical restraint;

4. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager; and

5 [~~3.~~] Be reported to the following by the provider agency:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery; and

c. BISB [~~BISU~~], within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and

(c) A Class III incident which shall be:

1. [~~Be~~] Grave in nature;

2. [~~Be~~] Immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

3. [~~Be~~] Reported [~~to the following~~] by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. BISB [~~BISU~~], within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to BISB [~~BISU~~] shall occur on the following business day. The following documentation with a complete written report shall be submitted for a death:

(i) A current plan of care;

(ii) A current list of prescribed medications including PRN medications;

(iii) A current crisis plan;

(iv) Medication Administration Review (MAR) forms for the current and previous month;

(v) Staff notes from the current and previous month including details of physician and emergency room visits.

(vi) Any additional information requested by the department,

(vii) A coroner's report; and

(viii) If performed, an autopsy report.

Section 7. ABI Waiting List. (1) An individual between the age of twenty-one (21) to sixty-five (65) years of age applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual shall submit to the department a completed Acquired Brain Injury Waiver Services Program Application form - MAP-26, and an Acquired Brain Injury Waiver Services [~~Program Physician Certification~~] form - MAP-10 [~~MAP-4099~~]

(3) The order of placement on the waiting list shall be determined by chronological date of receipt of the Acquired Brain Injury Waiver Services [~~Program Physician Certification~~] form - MAP-10 [~~MAP-4099~~] and by category of need of the individual as follows:

(a) Emergency. An immediate service is indicated as determined by:

1. The individual currently is demonstrating behavior related to his acquired brain injury that places the recipient or caregiver or others at risk of significant harm; or

2. The individual is demonstrating behavior related to his acquired brain injury which has resulted in his arrest; or

(b) Nonemergency.

(4) In determining chronological status, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the Acquired Brain Injury Waiver Services [~~Program Physician Certification~~] form - MAP-10 [~~MAP-4099~~] shall be maintained and not change if an individual is moved from one (1) category of need to another.

(5) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(6) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(7) If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.

(8) A written notification of placement on the waiting list shall be mailed to the individual or his legal representative and case management provider if identified.

(9) Maintenance of the ABI waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual;

(b) An individual or his legal representative and his case management provider shall be contacted in writing to verify the accuracy of the information on the waiting list and his continued desire to pursue placement in the ABI program; and

(c) The requested data shall be received by the department within thirty (30) days from the date on the written notice cited in subsection (8) of this section.

(10) Reassignment of category of need shall be completed based on the updated information and validation process.

(11) An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time an individual's status changes.

(12) An individual shall be removed from the ABI waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or his legal representative;

(b) The individual is deceased,

(c) The individual or his legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list; or

(d) An ABI placement for services offer is refused by the individual or legal representative and he or she does not, without good cause, complete the Acquired Brain Injury Waiver Services Program Application form - MAP-26 application within sixty (60) days of the placement allocation date.

1. The individual or his legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers, and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(13) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or his legal representative and the ABI case manager.

(14) The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.

(15) Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the waiting list.

Section 8. Consumer Directed Option (1) Covered services and supports provided to an ABI recipient participating in CDO shall include a home and community support service which shall:

(a) Be available only under the consumer directed option;

(b) Be provided in the consumer's home or in the community;

(c) Be based upon therapeutic goals and not diversional in nature;

(d) Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO ABI services; and

(e)1. Be respite for the primary caregiver; or

2. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management,

f. Medication management;

g. Socialization;

h. Relationship building;

i. Meal planning;

j. Meal preparation;

k. Grocery shopping, or

l. Participation in community activities.

(2) To be covered, a CDO service shall be specified in a consumer's plan of care.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO ABI setting.

(4) A consumer, including a married consumer, shall choose providers and the choice of CDO provider shall be documented in his or her plan of care.

(5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists; or

(b) The consumer fails to pay patient liability.

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination,

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative,

(d) Complete and submit to the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional ABI services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Except in a case where a consumer failed to patient liability, inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(11) A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative, or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident and equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry:

1. A consumer may employ a provider prior to a central registry check result being obtained for up to fourteen (14) days; and

2. If a consumer does not obtain a central registry check result within fourteen (14) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aid abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165 (1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) May be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a con-

sumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment.

1. If the proposed services are necessary to prevent imminent institutionalization,

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(17) For a CDO participant, a support broker may conduct an assessment or reassessment.

Section 9. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 10 [9.] Incorporation by Reference. (1) The following material is incorporated by reference.

(a) "MAP-109 Prior Authorization for Waiver Services", March 2007 edition;

(b) "MAP 24C, SCL or ABI Admission Discharge Department for Community Based Services (DCBS) Notification", April 2007 edition;

(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application", May 2003 edition;

(d) "MAP-95, Request for Equipment Form", June 2007 edition;

(e) "MAP-10 Waiver Services", January 2007 edition;

(f) "Incident Report", April 2007 edition;

(g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007 edition

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition;

(i) "Rancho Los Amigos Level of Cognitive Function Scale", November 1974 edition;

(j) "MAP-351, Medicaid Waiver Assessment", March 2007 edition;

(k) "Mayo-Portland Adaptability Inventory-4", March 2003 edition; and

(l) "Person Centered Planning: Guiding Principles", March 2005 edition. [~~"MAP-011, Acquired Brain Injury Assessment of Needs and Plan of Care, December 2003 edition";~~

~~(b) "MAP-24B, Acquired Brain Injury (ABI) Recipient's Admission Discharge Department for Community Based Services (DCBS) Notification, May 2003 edition";~~

~~(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application, May 2003 edition";~~

~~(d) "MAP-95, Request for Equipment Form, September 2002 edition";~~

~~(e) "MAP-552K, Department for Community Based Services Notice of Availability of Income for Long Term Care/Waiver Agency/Hospice, January 2001 edition";~~

~~(f) "MAP-4096, Acquired Brain Injury Waiver Services Program Applicant/Recipient Memorandum of Understanding, May 2003 edition";~~

~~(g) "MAP-4098, Acquired Brain Injury Plan of Care Modification, May 2003 edition";~~

~~(h) "MAP-4099, Acquired Brain Injury (ABI) Waiver Services Program Physician Certification, May 2003 edition";~~

~~(i) "Incident Report, December 2003 edition";~~

~~(j) "MAP-4102, Freedom of Choice of Home and Community Based Waiver Service Providers, May 2003 edition";~~

~~(k) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, January 2000 edition"; and~~

~~(l) "Rancho Los Amigos Level of Cognitive Function Scale, November 1974.~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4.30 p.m.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a.m.
CONTACT PERSON. Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes a consumer-directed option services program that allows Medicaid's ABI waiver partici-

pants to assist with the design of their programs, choose their providers of services, and direct the delivery of services to meet their needs. This amendment also requires ABI providers' employees and volunteers to submit to a child abuse/neglect central registry check and a check of the nurse aide abuse registry, and not be listed on either registry for the purpose of employment or service as a volunteer. This amendment further establishes what types of documentation must be provided to the department in case of death of an ABI recipient. Additionally, this amendment requires case management providers to complete and submit to the department a Mayo-Portland Adaptability Inventory-4 for each ABI recipient within thirty (30) days of admission into the ABI program, annually thereafter, and upon discharge.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the consumer-directed option services program established by KRS 205.5606.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205.5606 by implementing the consumer-directed option services program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by implementing a consumer-directed option services program for ABI recipients in accordance with KRS 205.5605 and 5606.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect Medicaid's ABI waiver recipients who opt to participate in the consumer-directed services program. Currently, there are approximately 120 members enrolled in the ABI waiver program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid ABI waiver recipients may opt to participate in the consumer directed option services program. An individual who chooses to participate will be assisted by a support broker. Individuals who wish to provide consumer directed services must meet basic requirements including: complete and submit a consumer directed option provider agreement to the consumer's support broker, be at least eighteen (18) years of age, pass required background checks, be able to communicate effectively, and report any suspected abuse, neglect, or exploitation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment is required by KRS 205.5606 and does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An ABI waiver recipient who enrolls in the consumer directed option program will be able to choose their providers of non-medical services, in their approved plan of care, as well as how and when they will receive the services. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and non-medical home and community based services and supports. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. CDO providers will be reimbursed for providing services to CDO consumers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time.

(b) On a continuing basis: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: ABI providers, as a result of an amendment to this administrative regulation, will be required to obtain a child abuse/neglect central registry check for potential staff and volunteers. Central registry checks cost $10.00 per individual.

(9) Tiering: Is tiering applied? Consumer-directed option (CDO) providers are subject to less strict provider qualifications than non-CDO providers in order to enhance recipient access to services and to facilitate greater recipient independence among recipients in accordance with KRS 205.5606.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid ABI waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and 205.5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

Note: If specific dollar estimates cannot be determined, provide

a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

STATEMENT OF EMERGENCY
922 KAR 1:050E

This emergency administrative regulation, 922 KAR 1:050E, Approval of adoption assistance, is necessary to comply with federal Title IV-E state plan requirements in 42 U S.C. 673 and related federal interpretation. The Code of Federal Regulations, 45 C.F.R. 1355 32(d)(4), specifies a requirement of a Program Improvement Plan (PIP) when a federal review determines that a state is not in compliance with applicable state plan requirements. A federal review has determined that Kentucky is not in compliance with federal law and interpretation in its federal Title IV-E adoption assistance policies and practice. The U.S. Department of Health and Human Services directed Kentucky on April 12, 2007, to "immediately conform to the federal requirements while developing and implementing its PIP." Action steps of the Kentucky's Title IV-E Adoption Assistance PIP include revisions of its administrative regulation on adoption assistance. Failure to immediately conform to the federal mandate risks losing a portion of the state's approximately $81 million in federal Title IV-E funding. An ordinary administrative regulation would delay compliance with federal Title IV-E State plan requirements in section 473 of the Social Security Act. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Emergency Amendment)

922 KAR 1:050E. Approval of adoption assistance.

RELATES TO: KRS 199 462, 199.555, 199.557, 205 639(2), (3), 216B.450(5)[(4)], 600 020(20)[(2)], (48), 620.020(5), Chapter 625, 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 416, 673, 12102, 1382(a)[, EO 2004-726]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.555(6), (10), 199.557(4)

EFFECTIVE: July 12, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. [agencies for the proper administration of the cabinet and its programs. EO 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.] KRS 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. KRS 199.557(4) requires the cabinet to implement federal Title IV-E adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of [the law on] state-funded adoption assistance and federal Title IV-E adoption assistance.

Section 1. Definitions. (1) ["Entitlement" means a benefit received by a child from a biological parent which includes:

(a) Social Security;

(b) Black Lung;

(c) Veterans Administration; or

(d) Railroad Retirement.

(2)] "Extraordinary medical expenses" is defined by KRS 199.555(4).

(2) [(3)] "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).

(3) [(4)] "Nonrecurring adoption expenses" is defined by KRS 199.555(3) or means expenses described in 42 U.S.C. 673(a)(1)(B)(i).

(4) [(5)] "Postadoptive subsidy" means a payment for a special needs child that begins at the finalization of a special needs adoption.

(5) [(6)] "Preadoptive subsidy" means a payment for a special needs child that begins with a preadoptive placement agreement and if foster care per diem ceases.

(6) [(7)] "Secretary" means the Secretary of the Cabinet for Health and Family Services or designee.

(7) [(8) "State or federal education program" means a primary, secondary, or postsecondary educational program accredited by the:

(a) Kentucky Department of Adult Education and Literacy;

(b) Kentucky Department of Education; or

(c) U.S. Department of Education.

(9)] "State-funded adoption assistance" is defined by KRS 199.555(2).

[(10) "Supplemental Security Income" or "SSI" means a program established in 42 U.S.C. 1382.]

Section 2. Adoption Assistance Criteria. (1) The Secretary shall make the decision to pay and provide adoption assistance in the best interest of a child.

(2) [Adoption assistance shall be:

(a) Primarily for the benefit of the child and not the adoptive parents; and

(b) Limited to a special needs child.

(3)] A special needs child shall include a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 199.555(1) or 42 U.S C. 673(c), and because the child:

(a) Has a physical or mental disability;

(b) Has an emotional or behavioral disorder;

(c) Has a recognized risk of physical, mental or emotional disorder;

(d) Is a member of a sibling group in which the siblings are placed together;

(e) Has had previous adoption disruption or multiple placements;

(f) Is a member of a racial or ethnic minority and [an African American child] two (2) years old or older; or

(g)1. Is age seven (7) or older and has a significant emotional attachment or psychological tie to his foster family; and

2. The cabinet has determined that it would be in the child's best interest to remain with the family.

Section 3. Eligibility. (1) A special needs child considered for state-funded adoption assistance shall:

(a) Be committed to the Cabinet for Health and Family Services; and

(b) Not have a parent with a legal claim to his custody.

(2) A special needs child considered for federal title IV-E adoption assistance shall:

(a) Meet the eligibility criteria established in 42 U.S.C. 673 at the time the adoption proceedings are initiated; and

(b) Not have a parent with a legal claim to his custody.

Section 4. Parental Standards. Parents receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:

(1) 922 KAR 1:350; or

(2) 922 KAR 1.310.

Section 5. Adoption Agreement. (1) An adoptive parent and the secretary shall sign an [a]:

(a) [DPP-195,] Adoptive placement agreement[,] to set forth the terms of a child's placement with the adoptive parent, if the child's adoption has not been finalized; and

(b) [DPP-1258A,] Adoption assistance agreement [Nonrecurring Adoption Expenses,] to set forth:

1. Nonrecurring adoption expenses, prior to finalization of the adoption, if such expenses will be incurred by the adoptive parent during the adoption of a special needs child, in accordance with KRS 199 555(6) or 45 C.F.R. 1356.41; and

2. [(c) DPP-1258, Adoption Assistance Agreement, to set forth] The scope and limits of the adoption assistance, prior to finalization of the adoption, in accordance with KRS 199.555(6) or 45 C.F.R. 1356.40(b).

(2)[(a)] The adoption assistance shall begin on the date that the:

1. Adoptive placement agreement [DPP-195] indicates the child's date of placement; or

2. Order of adoption is entered.[;]

(3) The amount of state-funded adoption assistance or federal Title IV-E adoption assistance shall not exceed the amount which would be paid for foster care maintenance for the same child, in accordance with KRS 199.557(4) or 42 U.S.C. 673(a)(3), including medically-fragile, specialized medically fragile, and care plus resource home per diem reimbursements established by the Department for Community Based Services. A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance to exceed a care plus resource home per diem reimbursement established by the Department for Community Based Services.

Section 6. Federal Title IV-E Adoption Assistance. (1) Unless a circumstance in accordance with subsection (2) of this section is met, federal title IV-E adoption assistance shall continue in accordance with KRS 199.557 and 42 U.S.C. 673(a)(4) until the child reaches age:

1. Eighteen (18); or

2. Twenty-one (21), if the child is determined to have a disability in accordance with subsection (3) of this section.

(2) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance shall be terminated if the:

(a) Adoptive parent:

1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;

2. Becomes deceased; or

3. Requests discontinuation of the adoption assistance; or

(b) Special needs child:

1. Becomes deceased;

2. Marries;

3. Gains full-time employment;

4. Is considered an emancipated minor; or

5. Is inducted into military service.

(3) Disability determination.

(a) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child's federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382(a) or 42 U.S.C. 416 by either the:

1. Social Security Administration; or

2. Medical review team of the cabinet.

(b) The factors to be considered by the medical review team in making a child's disability determination shall include:

1. The child's medical history and subjective complaint regarding an alleged physical or mental disability, illness or impairment; and

2. Competent medical testimony relevant to whether:

a. A physical or mental disability, illness, or impairment exists; and

b. The disability, illness, or impairment is sufficient to reduce the child's ability to gain full-time employment or pursue opportunities in a state or federal education program.

(c) Other factors to be considered in making a determination shall include the child's:

1. Age;

2. Employment history;

3. Educational background; and

4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child's ability to support and care for self.

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the Secretary and the:

1. Child, if the child is age eighteen (18) or older; or

2. Adoptive parent, if the child is under age eighteen (18).

(4) In accordance with 42 U.S.C. 673, an adoptive parent shall be responsible for notifying the cabinet of any change in circumstance to avoid overpayment in accordance with subsection (2) of this section.

(5) Federal Title IV-E adoption assistance may include:

(a) Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child;

(b) Preadoptive subsidy; or

(c) Postadoptive subsidy.

Section 7. State-funded Adoption Assistance. (1) Unless a circumstance in subsection (2) or (3) of this section is met, state-funded adoption assistance shall continue in accordance with KRS 199.555(8) until the child reaches:

(a) Age eighteen (18); or

(b) If the child is enrolled in high school or equivalent:

1. Age nineteen (19); or

2. The month of high school graduation or equivalency receipt, if the child's graduation or receipt of equivalency precedes the child's 19th birthday.

(2) The cabinet shall temporarily suspend state-funded adoption assistance during the period of time the adopted child:

(a)1. Resides in:

a. Foster care as defined in KRS 620.020(5);

b. A residential treatment facility as defined in KRS 600.020(48);

c. A psychiatric residential treatment facility as defined by KRS 216B.450(5);

d. A psychiatric hospital as defined by KRS 205.639(2) or (3) beyond thirty (30) consecutive calendar days; or

e. Detention:

(i) As defined in KRS 600.020(20);

(ii) Outside the adoptive home; and

(iii) For a period of thirty (30) calendar days or more; or

2. Is absent from the home of the adoptive parents for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and

(b) Receives care and support for the child's special needs from a local, state, or federal public agency.

(3) State-funded adoption assistance shall be terminated if the:

(a) Adoptive parent:

1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;

2. Becomes deceased; or

3. Requests discontinuation of the adoption assistance; or

(b) Special needs child:

1. Becomes deceased;

2. Marries;

3. Gains full-time employment;

4. Is considered an emancipated minor; or

5. Is inducted into military service.

(4) In accordance with KRS 199.555(9), an adoptive parent shall be responsible for notifying the cabinet of any circumstance to avoid overpayment in accordance with subsection (2) or (3) of this section.

(5) State-funded adoption assistance may include:

(a) Payment for extraordinary medical expenses related to the child's special needs that:

1. Existed prior to the adoption; and

2. Are not reimbursable by another source;

(b) Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child;

(c) Preadoptive subsidy, or

(d) Postadoptive subsidy.

[(b) Be adjusted:

~~1. During the course of adoption assistance negotiation, if a child receives:~~

~~a. Adoption assistance and an entitlement from a biological parent; or~~

~~b. Adoption assistance and SSI; and~~

~~2. By subtracting the amount of the entitlement or SSI dollar for dollar from the negotiated adoption assistance; and~~

~~(c) Not be adjusted if a child receives an:~~

~~1. Insurance settlement from a biological parent; or~~

~~2. Entitlement from an adoptive parent.~~

~~(3) State-funded or federal title IV-E adoption assistance, in accordance with KRS 199.555(8) or 42 U.S.C. 673(a)(4), shall:~~

~~(a) Discontinue upon notice of a change in circumstance as specified in subsection (5)(b)(3) of this section; or~~

~~(b) Continue until the child reaches:~~

~~1. Age eighteen (18);~~

~~2. The month of graduation from high school, if the child:~~

~~a. Graduates from high school by age nineteen (19); and~~

~~b. Receives state-funded adoption assistance; or~~

~~3. Age twenty-one (21), if the child is:~~

~~a. Disabled;~~

~~b. Receiving SSI; and~~

~~c. Enrolled in a state or federal education program.~~

~~(4) The cabinet shall temporarily discontinue state-funded adoption assistance or federal title IV-E adoption assistance during the period of time the adopted child:~~

~~(a)1. Resides in:~~

~~a. Foster care as defined in KRS 620.020(5);~~

~~b. A residential treatment facility as defined in KRS 600.020(48);~~

~~c. A psychiatric residential treatment facility as defined by KRS 216B.450(4); or~~

~~d. Detention:~~

~~(i) As defined in KRS 600.020(2);~~

~~(ii) Outside the adoptive home; and~~

~~(iii) For a period of thirty (30) consecutive calendar days or more; or~~

~~2. Is absent from the home of the adoptive parent for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and~~

~~(b) Receives care for the child's special needs from a local, state or federal entity.~~

~~(5) (a) If there is a change in the family situation or the special needs of the child, the adoption assistance may be changed accordingly.~~

~~(b) In accordance with KRS 199.555(9), an adoptive parent shall be responsible for notifying the cabinet of any circumstance which cause a change or discontinuance:~~

~~1. Pursuant to 42 U.S.C. 673;~~

~~2. To avoid overpayment in accordance with subsection (4) of this section; or~~

~~3. Due to:~~

~~a. An adoptive parent's request for discontinuance of adoption assistance, in accordance with KRS 199.555(9);~~

~~b. A child's death, marriage, full-time employment or induction into military service;~~

~~c. An adoptive parent's death;~~

~~d. The adoptive parent's failure to sign and return the DPP-1258, Adoption Assistance Agreement;~~

~~e. The adoptive parent's failure to sign and return the DPP-1258B, Adoption Assistance Annual Contact Form; or~~

~~f. The adoptive parent's voluntary or involuntary release from legal or financial responsibility for the support of the adopted child.~~

~~(6) (a) The amount of adoption assistance shall not exceed the amount which would be paid for foster care for the same child, in accordance with KRS 199.557(4), including the medically fragile, specialized medically fragile, and care plus resource home per diem reimbursements established by the Department for Community Based Services.~~

~~(b) Federal Title IV-E and state-funded adoption assistance may also include:~~

~~1. Payment for extraordinary medical expenses related to the child's special needs that:~~

~~a. Existed prior to the adoption; and~~

~~b. Are not reimbursable by another source;~~

~~2. Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child;~~

~~3. Preadoptive subsidy; or~~

~~4. Postadoptive subsidy.~~

~~(7)(a) An adoptive parent receiving the basic adoption assistance rate shall not be required to attend annual training.~~

~~(b) Except for the basic adoption assistance rate, as specified in paragraph (a) of this subsection, an adoptive parent shall meet annual training requirements for:~~

~~1. An advanced resource home as established in 922 KAR 1:350;~~

~~2. A medically fragile resource home as established in 922 KAR 1:350;~~

~~3. A specialized medically fragile resource home as established in 922 KAR 1:350; or~~

~~4. A care plus resource home as established in 922 KAR 1:350.~~

~~(8) If the adoptive parent fails to meet the annual training requirement specified in subsection (7)(b) of this section, the cabinet may reduce the amount of adoption assistance paid to an adoptive home to the basic adoption assistance rate.~~

~~(9) Cabinet staff shall provide notice of a reduction or discontinuance of adoption assistance:~~

~~(a) Ten (10) calendar days in advance; and~~

~~(b) In accordance with 922 KAR 1:320, Section 6.~~

~~(10) A child committed to the cabinet and placed in therapeutic foster care, as described in 922 KAR 1:310:~~

~~(a) May be considered for adoption assistance, if the child meets criteria established in 922 KAR 1:350, Section 7(1)(b); and~~

~~(b) Shall not be eligible to receive adoption assistance to exceed the care plus resource home per diem reimbursement, established by the Department for Community Based Services.~~

~~(11) The adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.~~]

Section 8 [~~6.~~] Annual Family Contact. (1) Annual contact with the adoptive family shall be made by mail or home visit to determine that the:

(a) [~~The~~] Child remains in the adoptive home;

(b) Parent continues to provide care and support for the child; and

(c) [~~The~~] Adoption assistance continues to meet the special needs of the child.

(2)[~~;~~

~~(c) The adoptive family meets the annual training requirements as specified in Section 5(7) of this administrative regulation; and~~

~~(d) A plan is developed with the adoptive family for meeting the annual training requirements as specified in Section 5(7)(b) of this administrative regulation.~~

~~(2) The DPP-1258B, Adoption Assistance Annual Contact Form, shall be used in the effective administration of subsection (1) of this section.~~

~~(3)~~] The cabinet may conduct a home visit after an adoption assistance annual contact is made [~~completed~~] by mail:

(a) If:

1. The adoptive parent requests a home visit;

2. The special needs of the child change, as indicated by the adoptive parent;

3.[~~a. The DPP-1258B is not completed by the adoptive parent; and~~

~~b.~~] Attempts to update information [~~complete the form~~] by additional mail or phone contact have failed; or

4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact [~~on the DPP-1258B~~]; or

(b) In accordance with 922 KAR 1:330.

Section 9. [~~7.~~] Adoption Assistance Renegotiation. (1) The cabinet may renegotiate adoption assistance before or after the adoption is finalized in accordance with KRS 199.555(6), (9), and 42 U.S.C. 673, and if there is a change in the:

(a) Child's special needs; or

(b) Circumstances of the adoptive parent, including a [~~Family's~~] situation that negatively affects the stability of the placement.

(2) Extraordinary medical expenses may be reimbursed through state-funded adoption assistance if conditions in KRS 199 555(6) are met.

(3) In accordance with 42 U S C. 673(a)(3), an adoptive parent shall be in concurrence with the renegotiated amount of federal Title IV-E adoption assistance.

(4) State-funded adoption assistance and federal Title IV-E adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.

Section 10 [~~8.~~] Service Appeal. An applicant for adoption assistance or an adoptive family shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 11. Notice of Change. Cabinet staff shall provide notice of a reduction, discontinuance, or termination of adoption assistance:

(a) Ten (10) calendar days in advance; and

(b) In accordance with 922 KAR 1:320, Section 6.

Section 12. State-funded Adoption [~~9.~~] Assistance Limitation. The number of state-funded adoption assistance cases and the amount of state-funded adoption assistance paid per case shall be limited by available funds for the state-funded adoption assistance program.

Section 13. Training. Contingent upon the availability of funding, the Department for Community Based Services shall offer training to adoptive parents receiving state-funded adoption assistance or federal Title IV-E adoption assistance consistent with training offered to resource home parents as specified in 922 KAR 1:350.

[~~Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "DPP-195, Adoptive Placement Agreement, edition 06/04";~~

~~(b) "DPP-1258, Adoption Assistance Agreement, edition 06/04";~~

~~(c) "DPP-1258A, Adoption Assistance Agreement Nonrecurring Adoption Expenses, edition 06/04", and~~

~~(d) "DPP-1258B, Adoption Assistance Annual Contact Form, edition 06/04".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR , Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes federal Title IV-E and state-funded adoption assistance to support the adoption of special needs children.

(b) The necessity of this administrative regulation. This administrative regulation is necessary to establish federal Title IV-E adoption assistance and state-funded adoption assistance to support the adoption of special needs children in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the adoption assistance program and, thereby, conforms to the content of the authorizing statutes KRS 194A.050(1), which allows for the promulgation of administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet; KRS 199.555(10), which authorizes the cabinet to promulgate administrative regulations necessary to set criteria for the adoption of special needs children; and KRS 199.557(4), which permits the cabinet to promulgate administrative regulations necessary to implement federal Title IV-E adoption assistance payments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing adoption assistance to support the adoption of special needs children in Kentucky and adhering to federal and state funding requirements regarding adoption assistance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation distinguishes federal Title IV-E adoption assistance from state-funded adoption assistance and makes technical corrections to comply with KRS Chapter 13A..

(b) The necessity of the amendment to this administrative regulation: This amendment promotes and ensures immediate conformity of departmental Title IV-E adoption assistance policy and practice with 42 U.S.C. 673 and related federal interpretation, as mandated in an April 12, 2007, letter from the U.S. Department of Health and Human Services (HHS) to the cabinet. In addition, this amendment adheres to actions steps incorporated in a program improvement plan (PIP) concerning the same, also required by HHS to suspend (and ultimately avoid) federal financial penalty of Kentucky's Title IV-E funding.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes KRS 194A.050(1), 199.555(6) and (10), and 199.557(4) by ensuring compliance with state and federal funding requirements regarding adoption assistance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 199.555(10) and KRS 199.557(4) by ensuring immediate conformity of DCBS Title IV-E adoption assistance policy and practice with 42 U.S.C. 673 and related federal interpretation, thereby avoiding the financial penalty of reduced Title IV-E funding for Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 5,000 active adoption assistance cases in Kentucky. 86% of these cases are eligible for Title IV-E assistance.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Adoptive families receiving adoption assistance for a special needs child will have no new requirements imposed upon them by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to the regulated entities is associated with the enactment of new adoption assistance agreements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the benefit of an unreduced level of federal Title IV-E funding to Kentucky will accrue to adoption assistance payment recipients. 86% of the state's active adoption assistance cases are eligible for Title IV-E assistance.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Any initial costs will be offset by the State's avoidance of a federal financial penalty to its Title IV-E funding.

(b) On a continuing basis: No cost to the administrative body is associated with the implementation of this administrative regula-

tion.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E and State funds are used to support adoption assistance as governed by this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the change to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? There is no tiering, as this administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S C. 673, 45 C.F.R. 1356 40(b), 1356 41

2. State compliance standards. KRS 194A.050, 199.555(6), (10), and 199 557(4)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 673, 45 C.F.R 1356.40(b), 1356.41

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.555(10), 199.557(4), and 42 U.S.C. 673

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? Any initial costs incurred as a result of this regulatory amendment will be offset by Kentucky's avoiding federal financial penalty of its Title IV-E funding.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will require no additional costs for ongoing administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

STATEMENT OF EMERGENCY
922 KAR 1:360E

This emergency administrative regulation is necessary to comply with provisions of Ky Acts ch. 252 Part 1, H.10(7). HB 380 2006 GA increased private child care provider reimbursement rates by three dollars beginning on July 1, 2007, in fiscal year 2007-2008. This emergency administrative regulation will ensure compliance with the implementation deadline included in HB 380 and will prevent a loss of state funds supporting private child care placements. In addition, the new reimbursement rates from private child care providers for fiscal year 2007-2008 will enhance existing services for children committed to the State and preserve the health and safety of children in private child care placements. An ordinary administrative regulation would not allow the agency sufficient time to implement the private child care provider rate increases by July 1, 2007. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

ERNIE FLETCHER, Governor
MARK D. BIRDWHISTELL, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Emergency Amendment)

922 KAR 1:360E. Private child care placement, levels of care, and payment.

RELATES TO: KRS Chapter 13B, 199.011, 199.640-199.680, 199.801, 600.020(23), 605.090(1)(b), (d), 610.110, Ky. Acts ch. 252 Part 1, H.10(7), 42 U.S.C. 672, OMB Circular A-122

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)[, ~~EO 2004-726~~]

EFFECTIVE: June 28, 2007

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to establish administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services.~~] KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities, (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by [at] KRS 199.011.

(2) "Child-caring facility" or "facility" is defined by [at] KRS 199.641(1)(b).

(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by [at] KRS 600.020(23).

(6) "Gatekeeper" means the department or agent responsible for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;

2. Placement;

3. Performance measurement, and

4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care, which includes the following

(a) DPP-886, Private Child Care Client Interagency [~~Interagency~~] Referral Form; [~~and~~]

(b) DPP-886A, Application for Referral and Needs Assessment; and

(c) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach); or

2. Child Behavior Checklist For Ages 6-18;

(11) "Model program cost analysis" is defined by [~~at~~] KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(13) "Time study" is defined by [~~at~~] KRS 199.641(1)(e)

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) Upon assignment of an initial level of care by the gatekeeper, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator who shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(3) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. In the event of an emergency placement, within two (2) business days of the placement; and

(b) Arrange transportation for the child to the placement.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall:

(1) Evaluate a child forty-eight (48) months of age or older:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency;

(b) For an initial or reassigned level of care, and

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed DPP-886, Private Child Care Client Inter-agency [~~Interagency~~] Referral Form, to the department.

(3) Reassess a child through a utilization review:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b)1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. [~~(c)~~] Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the level has expired.

(5) Monitor each child-caring facility and child-placing agency; and [~~, at the request of the cabinet, through a program review that includes:~~

~~(a) Reviewing the extent to which services provided are in compliance with the child's individual treatment plan;~~

~~(b) Determining if a change in the child's needs are reflected in the child's individual treatment plan;~~

~~(c) Reviewing records on site,~~

~~(d) Interviewing residents and staff,~~

~~(e) Conducting satisfaction surveys of each:~~

~~1. Cabinet staff person making a referral for out of home care;~~

~~2. Child placed by the cabinet in a child-caring facility or child-placing agency; and~~

~~3. Child's parent or custodian,~~

~~(f) Submitting written reports to the:~~

~~1. Child-caring facility or child-placing agency; and~~

~~2. Cabinet,~~]

(6) Maintain [~~Maintaining~~] a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes.

Section 4. Levels of Care. (1) A Level I child requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child, and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff;

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure;

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence when the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child:

(a) Has behavioral and physical, mental or social needs that may present a moderate risk of causing harm to himself or others;

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child:

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance

Section 5. Payment Methodology and Rates. (1) Payment Methodology. The cabinet shall establish a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, based upon the model program cost analysis defined at KRS 199.641(d). Each private, nonprofit child caring facility shall report to the cabinet annually, on Form DPP-888, cost report and time study data

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined. The factor shall be determined as follows:

(a) Based on the amount of treatment provided at each level of care; and

(b) By determining the median of:

1. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities, and

2. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet,

(c) The median number of daily treatment hours for children whose level is:

1. Determined, the median level of care shall be represented by an index factor of one (1); or

2. Not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to a child in the median level.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board, and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate

(6)(a) To the extent funds are available, an incentive payment for a private[~~, nonprofit~~] child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support,

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period;

6. Increased achievement of permanency goals; and

7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private[~~, nonprofit~~] child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes described in subsection (6)(a) of this section; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private[~~, nonprofit~~] child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private[~~, nonprofit~~] child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private[~~, nonprofit~~] child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private[~~, nonprofit~~] child-caring facilities to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) [~~Shall be tailored to fit the specific needs identified for the service region served by the child-caring facility;~~

~~(c) Shall be available within the geographic area encompassed by the service region; and~~

~~(d)~~] May include case management responsibilities shared between the cabinet and the child-caring facility.

(8) Payment to child-caring facilities that provide alternative services according to subsection (7) of this section shall be based upon:

(a) The model program cost analysis; and

(b) Expectations agreed upon between the cabinet and the child-caring facility, such as:

1. Reduced length of stay in out-of-home placement;

2. Increased safety from child abuse or neglect;

3. Increased number of children moving into and remaining in permanent placement;

4. Increased number of children and their families cared for in close proximity to their home communities;

5 Increased number of children reunified with their families;

6. Increased accountability for success in after care; and

7. Decreased reentry into state custody.

Section 6. Residential Care (1) A child-caring facility in the levels of care reimbursement plan shall be licensed under 922 KAR 1:305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The provider shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be.

(a) Level I - fifty-one (51) [~~forty-eight (48)~~] dollars and nineteen (19) cents, effective July 1, 2007;

(b) Level II - sixty-one (61) [~~fifty-eight (58)~~] dollars and fifty-two (52) cents, effective July 1, 2007;

(c) Level III -$109 71, effective July 1, 2007 [~~$106.71~~];

(d) Level IV:

1. $151 03, effective July 1, 2007 through June 30, 2008; or

2. $133 80, effective July 1, 2008[~~- $130.80~~]; and

(e) Level V:

1. $210 64, effective July 1, 2007, through June 30, 2008; or

2. $189 54, effective July 1, 2008 [~~- $186 54, effective October 1, 2004~~].

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be.

(a) Effective July 1, 2007, through June 30, 2008, the rate for emergency shelter care shall be:

1. $115.31 per day for a child-caring facility with a treatment license, or

2. $101.41 per day for a child-caring facility without a treatment license.

(b) Effective July 1, 2008, the rate for emergency shelter care shall be:

1. $102.87 [~~Ninety-nine (99) dollars and eighty-seven (87) cents~~] per day for a child-caring facility with a treatment license; or [~~and~~]

2. Ninety (90) [~~(b) Eighty-seven (87)~~] dollars and eighty-three (83) cents per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review; or

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section [~~ninety-nine (99) dollars and eighty-seven (87) cents~~] per day, effective July 1, 2007; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day;

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section [~~ninety-nine (99) dollars and eighty-seven (87) cents~~] per day, effective July 1, 2007; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) Effective July 1, 2007, basic daily rate for foster care shall be forty-three (43) [~~forty (40)~~] dollars.

(2) Effective July 1, 2007, daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher - seventy-three (73) [~~seventy (70)~~] dollars.

(b) Level III - seventy nine (79) [~~seventy-six (76)~~] dollars and seventy-eight (78) cents.

(c) Level IV - ninety-seven (97) [~~ninety-four (94)~~] dollars and eleven (11) cents.

(d) Level V - $134.26 [~~$131.26~~].

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent, and

(2) Inclusive of child care cost, forty-three (43) [~~forty (40)~~] dollars per day, effective July 1, 2007, for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. A child-caring facility or child-placing agency shall:

(1) Inform the department of the levels of care the facility or agency has the ability to serve;

(2) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

(a) Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

(b) Clinical services including:

1. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

2. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

(c) Support services that:

1. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

2. Allow a child to cope with the disability or distress;

3. Provide access to improving the educational or vocational status of the child; and

4. Provide essential elements of daily living;

(3) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

(a) For a child who has an IQ above seventy (70), a behavior inventory appropriate to the child's developmental level consisting of completed forms:

1. Child Behavior Checklist for Ages one and one-half (1 1/2) - five (5) (Achenbach); or

2. Child Behavior Checklist for Ages six (6) - eighteen (18) (Achenbach), every six (6) months; and

(b) For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level consisting of a completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology) and Scales of Independent Behavior-Revised (SIB-R), by the first utilization review due date and every twelve (12) months thereafter; and

(c) To the gatekeeper and designated cabinet staff, a copy of the following completed forms:

1. On a quarterly basis, for a private child care residential placement, [~~:~~]CRP-001, Children's Review Program Residential Application for Level of Care Payment[~~:~~], or

2. On a semiannual basis for a foster care placement, [~~:~~]CRP-003, Children's Review Program Foster Care Application for Level of Care Payment[~~:~~],

(4) Provide outcomes data and information as requested by the gatekeeper; and

(5) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

(a) The Council on Accreditation; or

(b) The Joint Commission on Accreditation for Healthcare Organizations.

(6) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (5) of this section.

Section 11. Utilization Review and Authorization of Payment. (1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(3) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(3) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper; or

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged; or

(b) Level of care is reduced, and the.

1. Child remains in the same placement, the lower level of care shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(3) of this administrative regulation have been submitted on time,[;] and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, [or] child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, [or] child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, [or] child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, [or] child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency [~~Inter-agency~~] Referral Form for an initial or reassigned level;

2. CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization form for a utilization review; [or]

3. CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment form for a utilization review; or

4. CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment, form for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-004, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive:

(a) To the date of the most recent utilization review due date; or

(b) The date of admission, whichever is most recent

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-004, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-004, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, [or] child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-004, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment, or

(b) New child-caring facility or child-placing agency submitting the following[;] within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child,

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. [2.] If the child has an IQ of seventy (70) or above:

a. Child Behavior Checklist For Ages one and one-half (1 1/2) - five (5) (Achenbach); or

b. Child Behavior Checklist for Ages six (6) - eighteen (18).

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1:320.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", edition 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", edition 6/01;

(c) "CRP-001, Children's Review Program Residential Application for Level of Care Payment", edition 11/04,

(d) "CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization", edition 11/04;

(e) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment", edition 7/07;

(f) "CRP-004, Children's Review Program Notice of Level of Care Redetermination", edition 11/04;

(g) "CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", edition 11/04,

(h) "CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment", edition 7/07;

(i) "DPP-114, Level of Care Schedule", edition 7/07;

(j) "DPP-886, Private Child Care Client Inter-agency Referral Form",
edition 10/04;

(k) "DPP-886A, Application for Referral and Needs Assessment", edition 07/07;

(l) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", edition 10/04;

(m) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", edition 1990; and

(n) "Scales of Independent Behavior-Revised (SIB-R)", edition 1996 [~~"DPP-114, Level of Care Schedule, edition 10/04";~~

~~(b) "DPP-886, Private Child Care Client Inter-agency Referral Form, edition 10/04",~~

~~(c) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach), edition 7/00",~~

~~(d) "Child Behavior Checklist for Ages 6-18 (Achenbach), edition 6/01";~~

~~(e) Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology), edition 1990;~~

~~(f) "Scales of Independent Behavior-Revised (SIB-R), edition 1996";~~

~~(g) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities, edition 10/04";~~

~~(h) "CRP-001, Children's Review Program Residential Application for Level of Care Payment, edition 11/04";~~

~~(i) "CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization, edition 11/04";~~

~~(j) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment, edition 11/04";~~

~~(k) "CRP-004, Children's Review Program Notice of Level of Care Redetermination, edition 11/04", and~~

~~(l) "CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, edition 11/04".~~

] (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: June 27, 2007
FILED WITH LRC: June 28, 2007 at 4 p.m.
CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the five levels of care based upon the needs of a child for whom the cabinet has legal responsibility, a payment rate for each level, responsibilities of the gatekeeper, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program cost analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child committed to the cabinet with a private child care provider, levels of care and related payments, responsibilities/requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050(1), 199.641(4), 605 090(1)(d), and 605.150(1) by establishing the rate setting methodology, methodology for placement of a child committed to the cabinet with a private child care provider, levels of care, reimbursement rates, and related provider and gatekeeper responsibilities/requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child committed to the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the private child care provider rates in accordance with HB 380 2006 General Assembly, updates incorporated materials, and makes technical corrections and clarifications to comply with KRS Chapter 13A and best practice.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement the private child care provider rate increases included in HB 380 2006 GA, ensure the health and safety of children in private placements, provide clarifications per communications with the private provider community, the Children's Alliance, and the Children's Review Program, and make corrections to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its incorporation of private child care provider rate increases to comply with the effective date of the provision concerning the same contained in HB 380 2006 GA.

(d) How the amendment will assist in the effective administration of the statutes: In addition to compliance with HB 380 2006 GA, the amendment also clarifies procedures and responsibilities contained within the administrative regulation, and makes technical corrections to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2007, the Children's Review Program's database indicated that 3,340 children committed to the cabinet are placed in out-of-home care with a private child care provider. There are 57 private child care providers who have an existing agreement with the cabinet for out-of-home care services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Responsibilities, including incorporated materials, have been updated to reflect best practice and aid the determination of an appropriate level of care for a child currently in (or being placed in) a private child care placement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to the regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Private child care providers will realize a three dollar increase in each reimbursement rate per day for each child committed to the cabinet in their care, in accordance with HB 380 2006 GA.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The projected fiscal impact of this administrative regulation for fiscal year 2007-2008 is $10,457,100. HB 380 included $3.43 million for $3 increases to private child care providers. Additional increases are estimated to cost $7.03 million. CHFS officials plan to drawn down additional federal and restricted funds to cover these increases for State Fiscal Year 2007-2008.

(b) On a continuing basis: If the next biennium budget does not include funding to sustain the additional increases, the private child care provider reimbursement rates will revert back to include only the $3 increase with an estimated $3.43 million in annual cost plus any growth in the number of committed children in private child care provider settings.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E and state funds are the source of funding for this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of funding was provided to the cabinet through HB 380 2006 GA. There is no increase in fees to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672, OMB Circular A-122

2. State compliance standards. KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672, OMB Circular A-122

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services is impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 672, OMB Circular A-122, KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605 150(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The projected fiscal impact of this administrative regulation for fiscal year 2007-2008 is $10,457,100. HB 380 included $3.43 million for $3 increases to private child care providers. Additional increases are estimated to cost $7.03 million. CHFS officials plan to drawn down additional federal and restricted funds to cover these increases for State Fiscal Year 2007-2008.

(d) How much will it cost to administer this program for subsequent years? If the next biennium budget does not include funding to sustain the additional increases, the private child care provider reimbursement rates will revert back to include only the $3 increase with an estimated $3.43 million in annual cost plus any growth in the number of committed children in private child care provider settings.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

PERSONNEL CABINET
(As Amended at ARRS, July 9, 2007)

101 KAR 2:046. Applications, qualifications and examinations.

RELATES TO: KRS 18A.030(2), 18A.032, 18A.110(1)(a), (7)(c), 18A.120, 18A.150

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(a), (7)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(a) and (7)(c) requires the Secretary of Personnel to promulgate administrative regulations which govern open competitive exams to determine [test] the relative fitness of applicants and for the rejection of candidates or eligibles who fail to meet reasonable requirements of the secretary. This administrative regulation establishes the application and examination requirements.

Section 1. Notices of Examinations. (1) An examination for entrance to the classified service shall be conducted on an open-competitive basis.

(2) [For a job classification in which there is expected to be a considerable and recurring need of eligibles, the secretary shall establish a recruitment program which shall be both positive and continuous.]

[(3)] The recruitment program shall:

(a) Accept an Application for Employment [application in an appropriate format designated by the secretary] [at any time]; and

(b) Hold an examination whenever and wherever the secretary deems it to be in the best interests of the Merit System.

(3) [(4) If continuous recruitment is not needed, a special announcement shall be used.

[(5)] Eligibles shall be listed in rank order upon certification of a register based on their highest valid scores [of score without respect to the date on which the examination was taken].

(4)[(6)][Notice of examinations shall be announced publicly at least ten (10) calendar days prior to the certification of the register. An application shall be accepted up to the date prior to certification of the register.

(5)][(7)] [Examinations may be advertised through the press, radio and other media.

(6)][(8)] The public notice of examination required by KRS 18A.110(7)(c) shall specify:

(a) The title and minimum salary of the job classification;

(b) The minimum qualifications required,

(c) The opening date on which an application will be received for placement of the applicant on the register; and

(d) [The relative weights to be assigned to different parts of the examination; and

(e)] All other pertinent information and requirements.

Section 2. Minimum Qualifications for Filing Applications. An open-competitive examination shall be available [open] to each applicant who meets the [self-nominates to meeting] minimum requirements determined [meets the standards or requirements fixed] by the secretary with regard to:

(1) Education;

(2) Experience,

(3) Training;

(4) licensure;

(5) Certification; or

(6) Other factors that relate to the ability of the candidate to perform the essential functions of the position with reasonable efficiency.

Section 3. Filing Applications. (1) An Application for Employment shall be electronically submitted. [An application shall be submitted in an appropriate format as designated by the secretary] [on an Application for Employment or Application Update, whichever is appropriate][.]

(2) An application shall require information concerning:

(a) Personal characteristics;

(b) Education;

(c) Experience;

(d) References; and

(e) Other pertinent information.

(3) An application shall be signed by the applicant personally or by electronic means. The truth of the statements contained in the application shall be certified by the applicant's signature.

(4) An applicant shall:

(a) Meet the minimum qualifications established in the class specification as to education and experience; and

(b) Not be guaranteed a passing grade by admission to an examination.

(5) For a job classification for which there is to be continuous recruitment, a statement shall be included in the announcement to the effect that an application shall be received until further notice.

[(6) If a special announcement bulletin is used, an applicant shall have at least ten (10) calendar days from the date of the announcement to apply and test for an opening.]

Section 4 Advance Examinations. (1) If an applicant does not meet the minimum requirements as to education at the time of application, but will meet these requirements as a result of the completion of currently scheduled educational work in within three (3) months following the date of receipt of the application, the applicant [he] shall be allowed to take the examination [with the approval of the secretary]

(2) An applicant taking the examination under subsection (1) of this section shall be eligible to apply for [self-nominating to] a specific vacancy announcement [have his name entered on the register] up to thirty (30) calendar days prior to completing the educational requirements.

Section 5. Character of Examinations. An examination shall:

(1) Be practical in nature;

(2) Be constructed to reveal the capacity of the candidate for the particular job classification for which the applicant [he] is competing;

(3) Consider the applicant's general background and related knowledge; and

(4) Be rated impartially.

Section 6. Conduct of Examinations. (1) An examination shall be conducted in as many places in the Commonwealth as are found convenient for applicants and practicable for administration.

(2) Reasonable accommodation in testing shall be provided upon timely request and receipt of verification of need.

(3) The secretary may [designate]:

(a) Designate monitors in various parts of the Commonwealth to[-

(a)] conduct an examination under instructions prescribed by the secretary;

(b) Provide for the compensation of the monitors; and

(c) Make arrangements for the use of a public building in which to conduct an examination.

(4) Retest procedures.

(a) For open continuous testing, an applicant shall not:

1. Be admitted to the same exam or its alternate more than two (2) times within a regular workweek; or

2. Take the same exam or its alternate more than twelve (12) times in a twelve (12) month period beginning with the original date the test is taken.

[(b) An eligible, who is removed from a register for failure to

~~report to an appointing authority or appointing authority's designee for consideration or declines appointment by an appointing authority shall not be allowed to retest for the job class from which the eligible was removed for three (3) months from the date of removal unless restored for reasons satisfactory to the secretary or in accordance with the decision of the Personnel Board on appeal.~~]

Section 7. Rating Examinations. (1) The secretary shall determine the rating or standing of an applicant on the register for each examination at the time of certification of a register.

(2) The secretary shall determine the passing score of each [~~A final rating shall be based upon a weighted average of the various parts of the total~~] examination.

(3) All applicants for the same job classification shall be accorded uniform and equal treatment in all phases of the examination procedure.

Section 8. Rating Education and Experience. (1) If the selection method is rating of education and experience [~~forms a part of the total examination~~], the secretary shall determine a procedure for the evaluation of the education and experience qualifications of an applicant.

(2) The formula used in appraisal shall give due regard to recentness and quality as well as quantity of experience and the pertinence of the education.

(3) The secretary shall investigate the candidate's educational documentation.

(4) The secretary **shall** [~~may~~] investigate the candidate's work history.

(5) If the results of this investigation disclose information affecting the rating of education and experience, the secretary shall:

(a) Rate the candidate accordingly;

(b) Make the necessary revision of the rating, and

(c) Notify the candidate.

(6) [~~If the knowledge, skills and abilities necessary for a job classification cannot be accurately measured by written, performance, or training and experience examination,~~] The secretary **shall** [~~may~~] determine the selection method for a qualifying job [~~the~~] classification based upon the knowledge, skills, and abilities necessary for the classification [~~to be "qualifying"~~].

(a) [~~If a classification is determined to be qualifying~~] The secretary shall notify the Personnel Board of the classification and **the** [~~its~~] [~~the~~] minimum requirements for a qualifying selection method.

(b) The secretary shall maintain for public review a list of those classifications which are qualifying along with the minimum requirements for each classification.

Section 9. [~~Oral Examinations. (1) If an oral examination forms a part of the total examination for a position, the secretary shall appoint one (1) or more oral examination panels as needed.~~

~~(2) An oral examination panel shall:~~

~~(a) Consist of three (3) or more members known to be interested in the improvement of public administration and in the selection of efficient government personnel; and~~

~~(b) Including one (1) member who is technically familiar with the character of work in the position for which an applicant shall be examined.~~

~~(3) If practicable, all candidates for the same job classification who qualify for the oral examination shall be rated by the same oral examination panel.~~

~~(4) A member of an oral examination panel shall:~~

~~(a) Disclose each instance in which the member knows the applicant personally; and~~

~~(b) Shall refrain from rating that applicant.~~

~~Section 10.~~] Notice of Examination Results. (1) Each applicant shall be notified of the examination score [~~final rating~~] as soon as the rating of the examination has been completed.

(2) An eligible shall be entitled to information concerning his relative position on the register upon request and presentation of proper identification.

Section 10.[~~11.~~] Adjustment of Errors. (1) The secretary shall correct a clerical error in the rating of an examination, if the error is called to the attention of the secretary within thirty (30) days after receipt of the notice of examination results.

(2) A correction shall not invalidate a certification and appointment previously made.

Section 11.[~~12.~~] Examination Records. The secretary shall maintain all records pertinent to an application or examination for a period of three (3) years.

Section 12.[~~13.~~] Incorporation by Reference. (1) **"Application for Employment", Fall 2007, is incorporated by reference.** [~~The following material is incorporated by reference:~~

~~(a)~~] [~~"Application for Employment", is incorporated by reference.~~][~~, Form P-2, September 1999; and~~

~~(b) "Application Update", September 1999.~~]

(2) This material may be inspected, copied, or obtained, **subject to applicable copyright law,** at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

BRAIN J. CRALL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 14, 2007 at 1 p.m.

CONTACT PERSON: Thomas B. Stephens, Office of Legal Services, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, phone 502 564-7430, fax 502 564-7603.

PERSONNEL CABINET
(As Amended at ARRS, July 9, 2007)

101 KAR 2:056. Registers.

RELATES TO: KRS 18A.005, 18A.110(1)(f), (7) 18A.120

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.040, 18A 110(1)(f), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(f) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligible lists for appointment and for the rejection of candidates or eligibles who do not meet reasonable selection requirements of the secretary. This administrative regulation establishes requirements for the state registers.

Section 1. Notification of [~~Register~~] Vacancies to Be Filed From a Register. An appointing authority shall notify the secretary[~~, in an appropriate format as designated by the secretary,~~] [~~on the prescribed Request for Certification Forms P-7 and P-7(a),~~] as far in advance as possible of a vacancy in a full-time or part-time classified position to be filled from a register.

Section 2. Minimum Requirements. [~~Use of Related Registers.~~] (1) The secretary **shall** [~~may~~] review the qualifications of additional applicants who meet the minimum requirements **and qualifications for a vacancy if there are insufficient applicants for the** [~~when there are insufficient interested eligibles for a~~] vacancy [~~select a register from a job classification for which the minimum qualifications are comparable to or higher than those required for the job classification in which a vacancy exists if there is an inadequate or insufficient register available.~~]

(2) The secretary **shall** [~~may~~], if appropriate, reevaluate [~~rerate~~] an applicant's training and experience on the basis of the minimum qualification required for the job classification in which the vacancy exists.

Section 3. Duration of Registers. (1) [~~If a register becomes so depleted that the preparation of usable certificates for a major portion of the current vacancies in a particular job classification is impracticable, the register shall be considered exhausted.~~

~~(2)~~] A register which has become exhausted shall expire upon the administration of a superseding examination and the establishment of a register on the basis of that examination.

(2)[~~(3)~~] If a new examination is established for a classification [~~class~~], the secretary shall send to each eligible remaining on the

current register a notification prior to the administration of a superseding examination.

Section 4. [~~Replenishment of Registers. If the secretary determines that a register, although not exhausted, is inadequate for the filling of an anticipated vacancy, the secretary may announce an open competitive examination for the purpose of replenishing the register.~~

~~Section 5.~~] Internal Mobility Program. The internal mobility program shall facilitate the movement of a qualified classified employee to a different position [~~in a different class~~] in the state personnel system.

(1) The secretary shall certify [~~maintain~~] a full-time or [~~and~~] part-time register which shall include:

(a) The names of eligibles for reemployment and appointment, in accordance with 101 KAR 2:066; and

(b) The names of interested employees with **internal mobility full-time or internal mobility part-time** [~~full-time, part-time, or internal mobility~~] status who:

1. Meet the minimum requirements; [~~and~~]

2. Seek promotion, demotion, or transfer to a different position; and

3. Have **applied for** [~~self-nominated to~~] a posted vacancy [~~announcement~~] [~~of a different class~~]

(2) An employee with status interested in internal mobility shall:

(a) Submit **an Application for Employment to the Personnel Cabinet; and** [~~a completed Application~~] [~~for Employment or Application Update, whichever is appropriate,~~] [~~to the Personnel Cabinet in an appropriate format as designated by the secretary; and~~]

(b) **Apply** [~~Self-nominate~~] for [~~Request~~] placement on the register.

(3) An appointing authority may request a register consisting of exclusively internal mobility candidates for a time period specified by the appointing authority of at least ten (10) calendar days.

Section 5 [~~6.~~] Reemployment Registers. The secretary shall prepare a reemployment register, which:

(1) Shall contain the names of former employees, in rank order of seniority, who are exercising their reemployment rights; and

(2) May be combined with the list of current employees in the Internal Mobility Program for the classification.

Section 6 [~~7.~~] Full-time or Part-time Registers. [~~(1)~~] The secretary shall certify [~~maintain~~] a separate register for full-time and part-time positions.

[~~(2) An eligible shall notify the cabinet if he wants to be on the register for full-time, part-time or both.~~]

Section 7 [~~8. Maximum~~] Number of Registers [~~Classifications~~]. A person meeting minimum qualifications for job classifications shall be eligible to **apply for** [~~self-nominate to~~] any posted vacancy. [~~Except for an individual exercising reemployment rights, a person shall not be eligible to have his name placed on the register for more than fifteen (15) individual job classifications at the same time.~~]

Section 8 [~~9.~~] Incorporation by Reference. (1) **The** [~~The following material is incorporated by reference.~~

~~(a) Request for Certification Forms P-7 and P-7(a), September 1999;~~

~~(b)~~] "Application for Employment", **Fall 2007**, is incorporated by reference.[~~, Form P-2, September 1999; and~~

~~(c) "Application Update", September 1999.~~]

(2) This material may be inspected, copied, or obtained, **subject to applicable copyright law,** at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 14, 2007 at 1 p.m.

CONTACT PERSON: Thomas B. Stephens, Office of Legal Services, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, phone 502 564-7430, fax 502 564-7603.

PERSONNEL CABINET
(As Amended at ARRS, July 9, 2007)

101 KAR 2:066. Certification and selection of eligible applicants [~~eligibles~~] for appointment.

RELATES TO: KRS 18A.030(2), 18A.110(1)(b), (7), 18A.165

STATUTORY AUTHORITY: KRS 18A.030(2), 18A.110(1)(b), (7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(b) and (7) requires the Secretary of Personnel to promulgate administrative regulations which govern the establishment of eligibility lists for appointment, and for consideration for appointment of persons whose scores are included in the five (5) highest scores on the examination. This administrative regulation establishes the requirements for certification and selection of **eligible applicants** [~~eligibles~~] for appointment.

Section 1. Request for Certification of **Eligible Applicants** [~~Eligibles~~] To fill a vacant position in the classified service that is not filled by lateral transfer, reinstatement, reversion or demotion, the appointing authority shall submit a request for a register to the secretary [~~in an appropriate format as designated by the secretary~~] [~~upon a completed Request for Certification Forms P-7 and P-7(a)~~]. The request shall:

(1) Be for one (1) or more positions in the same:

(a) Class; or

(b) County,

(2) Indicate

(a) The number and identity of the positions to be filled;

(b) The title of the job classification for each position; and

(c) Other pertinent information which the appointing authority and the secretary deem necessary; and

(3) Be made by the appointing authority as far in advance as possible of the date the position is to be filled.

Section 2. Certification of **Eligible Applicants** [~~Eligibles~~]. (1) Upon receipt of a request for a register [~~requisition~~], the secretary shall certify and submit [~~in an appropriate format~~] [~~writing~~] to the appointing authority the names of **eligible applicants** [~~eligibles~~] [~~available persons eligible~~] for the position who have **applied** [~~self-nominated~~]

(a) If one (1) position is involved, the secretary shall certify [~~and submit from the register for that job classification~~] the names of:

1. **Each applicant** [~~The applicants~~] who:

a. Applied [~~(a) Self-nominated~~] for the vacant position; and

b. If it is a tested position, has a score [~~(b) If a tested position, the names of those eligibles whose scores are~~] included in the highest five (5) scores earned through the selection method, **and**

2. All internal mobility candidates who are eligible and have **applied** [~~self-nominated~~] for the vacant position. [~~for that classification.~~]

(b) [~~3.~~][~~(b)~~] If more than one (1) vacancy is involved, the secretary may certify sufficient additional names for the agency's consideration in filling the total number of vacancies.

(c)[~~4.~~][~~(2)~~] Each appointment shall be made from:

1. The internal mobility candidate listing of eligible applicants who have applied for the vacant position; or

2. The eligible applicants with the five (5) highest scores who have applied for the vacant position, if applicable. [~~(a) The internal mobility candidate listing of~~] [~~or the~~] [~~eligibles who have self-nominated to the vacancy announcement, or~~]

(b) The eligibles with the five (5) highest scores who self nominated to vacant positions, if applicable [~~Scores shall be considered in whole numbers~~].

(2)[~~(3)~~] The life of a certificate during which action may be taken shall be ninety (90) [~~sixty (60)~~] days from the date of issue unless otherwise specified on the certificate. An appointment made from the certificate during that time shall not be subject to a change in the condition of the register taking place during that period.

Section 3. Preferred Skills Questions. **(1) The secretary shall approve a list of preferred skills questions to assist in the**

determination of an applicant's qualifications and availability for a job vacancy.

(2) The appointing authority may identify preferred skills questions from the approved list of questions which relate to the specific job classification. The appointing authority may request that an applicant answer those preferred skills questions when submitting an Application for Employment. [The secretary shall approve a list of preferred skills questions for various classifications. The appointing authority may identify those preferred skills questions from the approved list of questions and request that an applicant answer those preferred skills questions at the time of the self-nomination.

(2)] After an appointing authority has received a register, the appointing authority may consider the answers to the preferred skills questions to assist in applicant selection.

[(3) After an appointing authority has received a register, the appointing authority may consider the answers to the preferred skills questions to assist in applicant selection.] [Availability. An eligible may, during the life of a register, have himself listed as available or not available for appointment to a position of that job classification in a county or counties in the state by filing notice to that effect with the secretary.

Section 4. Selective Certification. (1)(a) The appointing authority shall specify, in writing, requirements of particular experience, education, or skill if those requirements are necessary for a position.

(b) After investigation of the duties and responsibilities of the position, if the secretary finds that the particular experience, education, or skill is essential for successful performance, the secretary shall certify, in order of rank on the register, the names of those persons with the five (5) highest scores who possess those qualifications.

(c) If, in certifying the names of the eligibles, the secretary finds there are fewer than five (5) eligibles, the secretary shall complete the certificate by adding, after the names of the eligibles, the names of other eligibles available for the appointment in the order of their respective rank on the register.

(2) The secretary shall transmit a copy of all requests for selective certification to the Personnel Board upon approval of the request.]

Section 4 [5.] Selection. The [final selection by the] appointing authority shall report [be reported in writing] to the secretary the recommended candidate for appointment [in an appropriate format] [At the same time, the appointing authority shall indicate the disposition of the other names listed on the certificate and shall certify to the secretary the nonavailability of an eligible passed over for that reason.

Section 6. Incorporation by Reference. (1) Request for Certification Forms P-7 and P-7(a), September 1999, is incorporated by reference.

(2) This material may be inspected, copied, or obtained at the Personnel Cabinet, 200 Fair Oaks Lane, 5th Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

BRIAN J. CRALL, Secretary

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 14, 2007 at 1 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 26, 2007 at 10 a.m. at 200 Fair Oaks Lane, Room 508, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by June 19, 2007 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until July 2, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Thomas B. Stephens, Office of Legal Services, 200 Fair Oaks Lane, Suite 516, Frankfort, Kentucky 40601, phone 502 564-7430, fax 502 564-7603.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Thomas Stephens

(1) Provide a brief summary of.

(a) What this administrative regulation does: This regulation establishes requirements for certification and selection of eligibles for appointment.

(b) The necessity of this administrative regulation: This regulation is necessary to the implementation of the Career Opportunities System which is part of the Kentucky Human Resource Information System (hereinafter "KHRIS") project currently underway. These updates allow the cabinet to accommodate the transition to an on-line application process whereby interested applicants apply for vacant positions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.030 allows the secretary to promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the requirements for certification and selection of eligibles for appointment.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: The amendment provides the ability for the cabinet to:

1. Determine the medium and format of state applications that is acceptable for the recruitment program;

2. Provide for the ability for applicants to self-nominate to a vacant position;

3. Provide for the appropriate format and order of eligibles on the certified register; and

4. Provide for the development and use of preferred skills questions which become part of the on-line employment application.

(b) The necessity of the amendment to this administrative regulation. The current recruitment process effectively requires applicants to drive to Frankfort to apply for a position. Although, applications are received via e-mail and by U. S. mail, practical administration lends itself to give priority service given to those applicants who apply in person. This process places an unfair burden on citizens who live far from Frankfort. For example, a person may drive four hours from Paducah to Frankfort to apply for a job within a few miles of their home.

The current regulation and administrative processes do not allow applicants to actively and selectively seek employment in a job of interest. Certified registers contain applicants who may have been seeking employment up to one to two years ago and are no longer interested in any open position. Commonwealth agencies are unable to effectively work registers to complete the process needed to fill critical positions in a timely manner.

The Personnel Cabinet recognizes the ineffectiveness of the current process created by the regulation as it currently exists. The cabinet sought and received authorization for KHRIS as a Capital Project by the 2004 General Assembly. In order to fully implement the vision of KHRIS, it is essential to change the recruitment environment to meet the needs of state government. This amendment provides the administrative authority to change the environment.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with KRS 18A.030(2), 18A.110 (1)(b) and (7).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will allow the cabinet to receive applications via an on-line system and provide interested, qualified applicants to Commonwealth agencies via a certified register. The amendment also allows for the introduction of preferred skills questions which will allow the agencies to determine

skills and interest during the self nomination process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Applicants for state employment,' the Personnel Cabinet and all Commonwealth agencies are affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Applicants will access the Personnel Cabinet's web site to apply for state employment. The Personnel Cabinet will provide a web site in order to receive applications for employment. The Commonwealth's Executive Branch agencies will have the ability to work with the cabinet to identify skills needed to perform the duties of the vacancy and ask pertinent preferred skill questions of the applicant during the nomination process to a vacancy.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to each of the entities identified in question (3). It is anticipated that this regulation amendment will result in a cost savings to applicants because they will no longer need to travel to Frankfort to apply for a position, the Personnel Cabinet will no longer process applications for which jobs are not vacant; and the agencies will no longer consider applicants who are uninterested in the vacancy.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The cabinet has determined this will create a more positive state employment process by eliminating the need for applicants to drive to Frankfort to apply for state employment. We currently see 60,000 applicants per year for approximately 4000 appointments. The majority of applicants are applying for an open position. The cabinet has spent numerous hours engaging state agencies and employee representatives and has received overwhelmingly positive response to this amendment.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: This regulation, as amended, is not anticipated to generate any new or additional costs.

(b) On a continuing basis: This regulation, as amended, is not anticipated to generate any new or additional costs. It is anticipated that this amendment will reduce costs to the cabinet and to the agency in that they will not spend time reviewing applications for applicants uninterested in their position.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: This regulation, as amended, is not anticipated to generate any new or additional costs, however, if any costs are associated with this amendment, the costs will be born by the Personnel Cabinet.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This regulation, as amended, is not anticipated to generate any new or additional fees.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied? Tiering does not apply because all classes are treated the same under this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state agencies with employees covered under KRS Chapter 18A.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.030 (2), 18A.110 (1)(b) and (7).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? The cost to administer the current recruitment program is approximately $2.7M per fiscal year. It is not anticipated that this cost will increase during the first year.

(d) How much will it cost to administer this program for subsequent years? The cost to administer the program should not exceed normal growth patterns for state government. It is anticipated that there may be a cost savings in the agencies as the new system allows for a more efficient recruitment process.

TEACHERS' RETIREMENT SYSTEM
(As Amended at ARRS, July 9, 2007)

102 KAR 1:030. Substitute teachers and nonuniversity, noncommunity college part-time members.

RELATES TO: KRS 161.545, 161.5465, 161.600(1)(a), (b), 161.612, 161.661(1)

STATUTORY AUTHORITY: KRS 161.310(1), 161.545

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.545 authorizes [provides that] members of the Teachers' Retirement System to receive service [may receive] credit for substitute and part-time service, towards [on] which contributions were not otherwise made, only in accordance with trustee administrative regulations. KRS 161.310(1) requires the Teachers' Retirement System Board of Trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business. This administrative regulation establishes the requirements [provides the means] for evaluating and crediting that service, including balance of the year purchases.

Section 1. A member substituting for at least seven-tenths (7/10) of the legal school year for a local school district or districts may make contributions for a full year and receive a full year of service credit.

Section 2. (1) A member, not employed by a university, college or community college, who is employed part time and who teaches or is paid on the basis of at least seven-tenths (7/10) of regular full-time service may make contributions for the balance of the contract year.

(2) Members who are employed on a part-time basis after the start of a regular contract year shall not be eligible to obtain service credit for any period of the contract year prior to the date of their employment.

Section 3. (1) Contributions for substitute and part-time service pursuant to Section 1 or [as permitted by Sections 1 and] 2 of this administrative regulation shall be based upon the equivalent annual contract salary and shall be made by December 31 immediately following the year in which the service occurred.

(2) Interest charges of eight (8) percent per annum shall be added to payments made after June 30 of the year that the service occurred.

(3) The total amount of service credit that may be purchased pursuant to [for substitute and part-time service as permitted by] Sections 1 and 2 of this administrative regulation shall not exceed five (5) years. [and any] Service purchased pursuant to Sections

1 and 2 of this administrative regulation [under those sections] shall be included in calculating the maximum of five (5) years of nonqualified service credit that may be purchased in accordance with [under] KRS 161.5465.

Section 4. (1) Service credit for substitute teaching and part-time employment rendered on or before June 30, 2002[,] and balance of the year purchases based on substitute teaching and part-time employment provided prior to June 30, 2002 [this date], shall have been purchased on or before December 31, 2002.

(2) Service credit for substitute teaching rendered on or before June 30, 2002 shall not be used for compliance with [meeting] minimum service requirements as set out in KRS 161.600(1)(a) and (b) and 161.661(1).

ZELLA WELLS, Chairperson
APPROVED BY AGENCY: March 28, 2007
FILED WITH LRC: March 30, 2007 at 1 p.m.
CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

TEACHERS' RETIREMENT SYSTEM
(As Amended at ARRS, July 9, 2007)

102 KAR 1:036. Part-time service for university, college, and community college members.

RELATES TO: KRS 161.220(4), 161.545, 161.5465
STATUTORY AUTHORITY: KRS 161.310(1), 161.545
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.545 authorizes [provides that] members of the Teachers' Retirement System to [may] make contributions based on part-time service in accordance with trustee [as provided by] administrative regulations. KRS 161.310(1) requires the Teachers' Retirement System Board of Trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business [of the board of trustees]. This administrative regulation establishes the service towards [sets out the service on] which contributions may be made and the procedures for crediting those contributions.

Section 1. Active members who opt to purchase service credit pursuant to this administrative regulation and who are employed on a part-time basis in a position listed [covered by the retirement system] in KRS 161.220(4)(b) and (n) in one (1) of the universities, colleges, or community colleges shall [may] make retirement contributions and receive service credit in compliance with [under] the following conditions:

(1) An active member who teaches or is paid the equivalent of at least three-tenths (3/10) of regular full-time service may make contributions on the member's [his] salary and receive a fractional year of service credit; or[.]

(2)(a) An active member who teaches or is paid on the basis of at least seven-tenths (7/10) of regular full-time service may make contributions for the balance of the contract year.

(b) Members who are employed on a part-time basis after the start of a regular contract year shall not be eligible to obtain service credit for any period of the contract year prior to the date of their employment.

(c) Contributions shall be based upon the equivalent annual contract salary if a full year of service is to be granted.

(3)(a) Retirement deductions shall not be made for members who are employed on a part-time basis.

(b) Members may make personal contributions for that service in accordance with [under the provisions of] this administrative regulation upon [proper] certification of service and salary by the applicable [proper] authority.

(c) The contributions shall be made directly to the retirement office on or before December 31 immediately following the fiscal year in which the part-time service was rendered.

(d) Interest charges of eight (8) percent per annum shall be added to payments made after June 30 of the year that the service occurred.

(e) The total amount of service credit that may be purchased pursuant to Section 1(2) [for substitute and part-time service as permitted by Sections 1 and 2] of this administrative regulation shall not exceed five (5) years. [and any] Service purchased pursuant to Section1(2) of this administrative regulation [under those sections] shall be included in calculating the maximum of five (5) years of nonqualified service credit that may be purchased in accordance with [under] KRS 161.5465.

ZELLA WELLS, Chairperson
APPROVED BY AGENCY: March 28, 2007
FILED WITH LRC: March 30, 2007 at 1 p.m.
CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

TEACHERS' RETIREMENT SYSTEM
(As Amended at ARRS, July 9, 2007)

102 KAR 1:038. Fractional service year for members initially employed on a full-time basis.

RELATES TO: KRS 161.545, 161.5465
STATUTORY AUTHORITY: KRS 161.310(1), 161.545
NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.545 authorizes [provides that] members of the Teachers' Retirement System to [may] make contributions for [any] service other than regular full-time teaching in accordance with trustee [as provided in the] administrative regulations. KRS 161.310(1) requires the Teachers' Retirement System Board of Trustees to promulgate administrative regulations for the administration of the funds of the retirement system and for the transaction of business [of the board of trustees] This administrative regulation establishes guidelines for accepting contributions and granting service credit for members employed for less than a full school year.

Section 1. (1) Except as provided in Sections 2, 3, and 4 of this administrative regulation, a member shall receive a proportional fraction of a year of service credit computed to the nearest hundredth if the member provides service for less than the regular contract year.

(2) A member employed in a position listed in KRS 161.220(4)(b) or (n) in one (1) of the universities, colleges, or community colleges shall be employed in a regular full-time position in order to receive a proportional fraction of a year of service credit.

Section 2. A member employed for at least the first one-half (1/2) or more of a regular contract year shall have the option of purchasing credit for the balance of the contract year in accordance with the conditions of this section.

(1) The member shall be employed in a regular full-time position pursuant to a contract that requires a full day of service for every workday of a full contract year.

(2) The member would have received one (1) year of service credit for completing the contract had it been completed.

(3) The member provided service for less than a full year as required by the contract.

(4) The member was employed pursuant to the contract at the beginning of the fiscal or school contract year.

(5) A member employed after the beginning of a regular contract year shall not be eligible to obtain service credit for the time prior to the member's employment.

(6) This option shall not be exercised by a member more than one (1) time in a three (3) year period.

(7) The member shall make contributions based on the equivalent annual contract salary, and interest at the rate of eight (8) percent shall be added to payments made after June 30 of the fractional year.

(8) Payment for contributions shall be made by December 31 immediately following the year in which the fractional year's

service occurred.

(9) The total amount of service credit that may be purchased shall not exceed five (5) years, and service purchased in accordance with this section shall be included in calculating the maximum of five (5) years of nonqualified service credit that may be purchased in accordance with KRS 161.5465.

Section 3. A member employed for at least seven-tenths (7/10) of the regular contract year shall have the option of purchasing credit for the balance of the contract year in accordance with the conditions of this section.

(1) The member shall be employed in a regular full-time position pursuant to a contract that requires a full day of service for every workday of a full contract year.

(2) The member would have received one (1) year of service credit for completing the contract had it been completed.

(3) The member provided service for less than a full year as required by the contract.

(4) The member was employed pursuant to the contract at the beginning of the fiscal or school contract year.

(5) A member employed after the beginning of a regular contract year shall not be eligible to obtain service credit for the time prior to the member's employment.

(6) The member shall make contributions based upon the equivalent annual contract salary, and interest at the rate of eight (8) percent shall be added to payments made after June 30 of the fractional year.

(7) Payment for contributions shall be made by December 31 immediately following the year in which the fractional year's service occurred.

(8) The total amount of service credit that may be purchased shall not exceed five (5) years, and service purchased in accordance with this section shall be included in calculating the maximum of five (5) years of nonqualified service credit that may be purchased in accordance with KRS 161.5465.

Section 4. A member employed for at least one (1) complete pay period shall have the option of purchasing credit for the balance of the contract year in accordance with the conditions of this Section.

(1) The member shall be employed in a regular full-time position pursuant to a contract that requires a full day of service for every workday of a full contract year.

(2) The member would have received one (1) year of service credit for completing the contract had it been completed.

(3) The member provided service for less than a full year as required by the contract.

(4) The member was employed pursuant to the contract at the beginning of the fiscal or school contract year.

(5) A member employed after the beginning of a regular contract year shall not be eligible to obtain service credit for the time prior to the member's employment.

(6) This option shall not be exercised by a member more than one (1) time in a ten (10) year period.

(7) The member shall make contributions based on the equivalent annual contract salary, and interest at the rate of eight (8) percent shall be added to payments made after June 30 of the fractional year.

(8) Payment for contributions shall be made by the end of the fiscal year next succeeding the year in which the last salary payment was made.

(9) The total amount of service credit that may be purchased shall not exceed five (5) years, and service purchased in accordance with this Section shall be included in calculating the maximum of five (5) years of nonqualified service credit that may be purchased in accordance with KRS 161.5465.

Section 5. A bona fide leave of absence shall be administered in accordance with 102 KAR 1:110. [~~Members employed in regular full-time positions under contracts that require service for everyday of a full contract year that would normally be accredited with one (1) full year of service credit, but who provide service for less than the regular contract year shall receive a proportional fraction of a year of service credit computed to the nearest 100th, except that members who are employed for the first one-half (1/2) or more of a regular contract year shall have the privilege of purchasing credit for the balance of the contract year. This privilege shall not be exercised more than one (1) time in any three (3) year period. Payment of contributions shall be made by December 31 immediately following the year in which the fractional year's service occurred.~~

~~Section 2. Members who are employed in regular full-time positions under contracts that require service for every day of a full contract year that would normally be accredited with one (1) full year of service credit and who are so employed at the beginning of a school year and] [who are so employed] [for at least seven-tenths (7/10) of any school year may make contributions based upon the equivalent annual contract salary and receive a full year of service credit. The contributions shall be made by December 31 immediately following the year in which the fractional year's service occurred.~~

~~Section 3. Members who are employed after the beginning of a regular contract year shall not be eligible to obtain credit for service time that occurred prior to their employment.~~

~~Section 4. Members regularly employed on a normal full-time basis under contracts that require service for every day of a full contract year that would normally be accredited with one (1) full year of service credit and who are so employed at the beginning of a fiscal year for at least one (1) complete pay period may make contributions for the balance of the fiscal year and receive one (1) full year of service credit. The payment of contributions shall be made at the end of the fiscal year next succeeding the year in which the last salary payment was made. The provisions of this section shall be applicable only once in any ten (10) year period.~~

~~Section 5. Interest charges of eight (8) percent shall be added to payments made after June 30 of the fractional year. The total amount of service credit that may be purchased for substitute and part-time service as permitted by Sections 1, 2, and 4 of this administrative regulation shall not exceed five (5) years and any service purchased under those sections shall be included in calculating the maximum of five (5) years of nonqualified service credit that may be purchased under KRS 161.5465.~~

~~Section 6. Nothing in this administrative regulation shall be construed as limiting payments made under a bona fide leave of absence as provided in other administrative regulations.~~]

ZELLA WELLS, Chairperson

APPROVED BY AGENCY: March 28, 2007

FILED WITH LRC: March 30, 2007 at 1 p.m.

CONTACT PERSON: Robert B. Barnes, Deputy Executive Secretary of Operations, 479 Versailles Road, Frankfort, Kentucky 40601, phone (502) 848-8500, fax (502) 573-0199.

GENERAL GOVERNMENT CABINET
Kentucky Board of Pharmacy
(As Amended at ARRS, July 9, 2007)

201 KAR 2:250. Pharmacist Recovery Network [~~Impaired Pharmacists~~] Committee.

RELATES TO KRS 315.121(1)(d), 315.126

STATUTORY AUTHORITY: KRS 315.126(3), 315.191(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 315.126(1) requires the Board of Pharmacy to establish a pharmacy recovery network committee (PRNC) [~~an impaired pharmacist committee~~]. This administrative regulation establishes minimum requirements for the establishment and operation of the PRNC [~~Impaired Pharmacists Committee~~]. This administrative regulation specifies the manner by which the board's PRNC [~~impaired pharmacist committee~~] consultant works with the board in intervention, evaluating and treating a pharmacist or intern, and providing for continuing care and monitoring by the consultant

through a treatment provider.

Section 1. The board's Pharmacist Recovery Network Committee (PRNC) [PRNC] [~~Impaired Pharmacist Committee~~] consultant shall be a pharmacist licensee of the board. The consultant shall assist the Case Review Committee (CRC) and the PRNC [~~Impaired Pharmacists Committee~~] in carrying out their respective responsibilities. This shall include working with the board's inspectors and investigators to determine whether a pharmacist or intern [~~practitioner~~] is in fact impaired.

Section 2. If a pharmacist or intern self reports impairment as a result of the misuse or abuse of alcohol or drugs, or both; or if the board receives a [~~written,~~] legally sufficient complaint alleging that a pharmacist or intern [~~licensee~~] is impaired as a result of the misuse or abuse of alcohol or drugs, or both, [~~or due to a mental or physical condition which could affect the licensee's ability to practice with reasonable care, skill and competence,~~] and no complaint against the pharmacist or intern [~~licensee~~] other than impairment exists, the reporting of any impairment [~~the~~] information to the board shall be forwarded to the consultant and shall not constitute grounds for discipline, if the PRNC [~~Impaired Pharmacists Committee~~] finds the pharmacist or intern [~~licensee~~] has:

(1) Acknowledged the impairment problem;

(2) Voluntarily enrolled in an appropriate, approved treatment program;

(3) Voluntarily withdrawn from practice or limited the scope of practice as required by the consultant, in each case, until the PRNC [~~Impaired Pharmacists Committee~~] is satisfied the licensee has successfully completed an approved treatment program; and

(4) Executed releases for medical records, authorizing the release of all records of evaluations, diagnoses, and treatment of the licensee, including records of treatment for emotional or mental conditions, to the consultant. The consultant shall not make copies or reports of records that do not regard the issue of the licensee's impairment and his or her participation in a treatment program.

Section 3. [~~If the licensee voluntarily agrees to withdraw from practice until the consultant determines that the licensee has satisfactorily completed an approved treatment program or evaluation, the Case Review Committee shall not become involved in the licensee's case.~~

~~Section 4. Inquiries related to impairment treatment programs designed to provide information to the licensee and others and which do not indicate that the licensee presents a danger to the public shall not constitute a complaint.~~

~~Section 5. If the board receives a legally sufficient complaint alleging that a licensee is impaired and no complaint against the licensee other than impairment exists, the board shall forward all information in its possession regarding the impaired licensee to the consultant.~~

~~Section 6. (1) The Impaired Pharmacists Committee and the Case Review Committee shall work directly with the consultant and all information concerning a practitioner obtained from the consultant by the committees shall remain confidential.~~

~~(2) A finding of probable cause shall not be made as long as the Impaired Pharmacists Committee is satisfied, based upon information it receives from the consultant, that the licensee is progressing satisfactorily in an approved impaired practitioner program and no other complaint against the licensee exists.~~

~~Section 7. In any disciplinary action for a violation other than impairment in which a licensee establishes the violation for which the licensee is being prosecuted was due to or connected with impairment and he further establishes that the licensee is satisfactorily progressing through or has successfully completed an approved treatment program, the information may be considered by the board as a mitigating factor in determining the appropriate penalty.~~]

~~Section 8.~~] (1) A treatment provider shall disclose to the consultant or board if applicable all information in its possession regarding the issue of a pharmacist's or intern's [~~licensee's~~] impairment and participation in the treatment program. [~~All information obtained by the consultant shall be confidential and may only be shared with the board or the Impaired Pharmacists Committee.~~

~~(2)~~] Failure of the treatment provider to provide information to the consultant shall be a basis for the withdrawal of the use of the program or provider.

(2)[~~(3)~~] If in the opinion of the consultant or PRNC, an impaired pharmacist or intern [~~licensee~~] has not progressed satisfactorily in a treatment or recovery program, all information regarding the issue of a pharmacist's or intern's [~~licensee's~~] impairment and participation in a treatment or recovery program in the consultant's possession shall be disclosed to the board. That [~~Such~~] disclosure shall constitute a complaint. [~~If the consultant concludes that the impairment is affecting a licensee's practice and constitutes an immediate, serious danger to the public health, safety, or welfare, that conclusion shall be communicated to the board.~~]

Section 4. All information concerning a pharmacist or intern held by the consultant, PRNC, CRC, or board shall remain confidential.

Section 5. (1) The PRNC shall be comprised of eleven (11) members. The members shall include:

(a) The President of the Board of Pharmacy;

(b) The Chair of the PRNC;

(c) The Executive Director of the Board of Pharmacy; and

(d) Eight (8) other members, of which seven (7) shall be pharmacists and one (1) shall be a citizen member.

(2)(a) All members shall have the same rights, which include voting privileges.

(b) A [~~No~~] member of the PRNC shall not be on the board, except the President of the Board.

(c) Any criminal conviction or disciplinary action by a licensure board against a proposed member shall be reported to the board prior to consideration for appointment.

(d) There may be no more than four (4) members in successful recovery on the PRNC.

(e) A [~~No~~] pharmacist under a Pharmacist Recovery Network Agreement shall not serve on the PRNC.

(3)(a) A PRNC member may be appointed by the board a maximum of three (3), four (4) year [~~full or a portion thereof~~] terms.

(b) A PRNC member shall not serve more than (2) terms consecutively.

(c) After serving two (2) consecutive terms a PRNC member shall rotate off the PRNC for at least two (2) years.

(d) A committee member shall serve no more than twelve (12) years on the PRNC.

(e) The President of the Board, the PRNC Consultant, and the Executive Director of the Board membership on the PRNC shall not constitute a twelve (12) year term.

(f) Membership of the PRNC shall be selected by the board from a list of qualified candidates submitted by an interested individual or entity.

(4) A member of the PRNC who [~~that~~] becomes impaired, relapses, has any criminal conviction, or has any disciplinary action by a licensure board shall immediately resign from the PRNC.

(5) The board by majority vote, with the recusal of the President of the Board, may remove a member of the PRNC for any of the following reasons:

(a) Refusal or inability of a committee member to perform duties as a member of the committee in an efficient, responsible, and professional manner;

(b) Misuse of the committee by a member to obtain personal, pecuniary, or material gain or advantage for the member or others; and

(c) Violation of any provision of KRS Chapter 315.

PETER J. ORZALI, President

APPROVED BY AGENCY: May 9, 2007

FILED WITH LRC: May 14, 2007 at 4 p.m.

CONTACT PERSON: Michael Burleson, Executive Director, Kentucky Board of Pharmacy, Spindletop Administrative Building

Suite 302, 2624 Research Park Drive, Lexington, Kentucky 40511; phone 859 246-2820; fax 859 246-2823.

GENERAL GOVERNMENT CABINET
Kentucky Board of Medical Licensure
(As Amended at ARRS, July 9, 2007)

201 KAR 9:460. Written plan.

RELATES TO: KRS 311.673(1), 311.680
STATUTORY AUTHORITY. KRS 311.673(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 311.673(1) authorizes the board to promulgate administrative regulations necessary to the certification and regulation of acupuncturists. This administrative regulation establishes a written plan required by KRS 311.680.

Section 1. Pursuant to [~~comply with the~~] requirements of KRS 311.680, the written plan developed by each certified acupuncturist shall include[~~, at a minimum, but is not limited to~~] the following information:

(1) Consultation.

(a) The acupuncturist shall identify the protocol [~~will identify the protocol(s)~~] to be used to determine whether a potential patient suffers from one of the potentially serious disorders or conditions listed in KRS 311.680(3), and to determine the identity of the physician treating the patient for the disorder or condition [~~disorder(s) or condition(s)~~].

(b) The acupuncturist shall identify the telephone, facsimile, letter, or electronic mail as [~~will identify~~] the means of communication to be used [~~telephone, facsimile, letter, and/or electronic mail,~~] to:

1. Notify the treating physician that the patient is seeking treatment by acupuncture and has disclosed that he or she is being treated for a potentially serious disorder or condition; and

2. Obtain verification that the patient is under the care of the physician.

(c) The acupuncturist shall [~~will~~] identify the method that will be used to document the consultation and verification made pursuant to Section 1(1)(b)2 of this administrative regulation [~~under subsection 2, supra~~]. If notification and verification are accomplished by telephone, the documentation shall [~~must~~] include, at a minimum, the name of the staff member in the physician's office providing the verification.

(d) The acupuncturist shall [~~will~~] specify how many attempts he or she will make to obtain verification from the treating physician that the patient is under the care of before initiating treatment by acupuncture. A minimum of two (2) attempts is required before treatment is initiated, but the acupuncturist may choose a higher number of attempts.

(e) While verifying whether [~~If, when verifying that~~] the patient is under the physician's care for a potentially serious disorder or condition, If the physician identifies possible contraindications for the use of acupuncture in the particular patient or recommends against the use of acupuncture, the acupuncturist may use her or his professional judgment to determine if it is reasonable to provide acupuncture treatment to that particular patient, considering all available facts.

(f) A potential patient shall [~~will~~] be considered to be "under the care of a physician" if receiving regular or recurring treatment from the physician or from a physician assistant being supervised by the physician or from an advanced registered nurse practitioner who is practicing in association with the physician.

(2) Emergency transfer.

(a) The certified acupuncturist shall identify the nearest emergency room facility by name, address and telephone number.

(b) The certified acupuncturist shall identify the protocol [~~protocol(s)~~] for emergency transfer of patients which shall include, at a minimum, the requirement that the acupuncturist will utilize the "911" emergency notification system to arrange for emergency transfer of the patient [~~patient(s)~~].

(3) Referral to appropriate health-care facilities or practitioners

(a) The acupuncturist shall identify, by name, address and telephone number, at least two (2) physicians who have agreed to consult with and accept referrals from the acupuncturist.

(b) If [~~Where~~] applicable, the acupuncturist shall [~~will~~] also identify health-care facilities, that [~~which~~] have agreed to accept referrals from the acupuncturist.

DANNY M. CLARK, President
APPROVED BY AGENCY: May 10, 2007
FILED WITH LRC: May 14, 2007 at noon
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GENERAL GOVERNMENT CABINET
Kentucky Real Estate Appraisers Board
(As Amended at ARRS, July 9, 2007)

201 KAR 30:180. Distance education standards.

RELATES TO: 324A.035(3)(d), (f)
STATUTORY AUTHORITY: KRS 324A.020, 324A.035(3)(d), (f)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324A.035(3)(d) and (f) require the board to establish requirements for education and continuing education of appraisers. This administrative regulation establishes the requirements for approval of distance education courses for real estate appraisers.

Section 1. Definitions. (1) "Distance education course" means an organized instructional program [~~process which is~~] presented through the use of computer technology, satellite transmission, or optical fiber transmission.

(2) "Instructor" means the individual responsible for the dissemination of the educational information in a distance education course.

(3) "Provider" means an [~~any~~] organization or individual offering an education course [~~continuing~~] [~~education courses~~] via computer technology, satellite transmission, or optical fiber transmission.

Section 2. Limitations On Distance Education Courses. (1) A distance education course that involves [~~Distance education course approval shall be available only to courses for continuing education under 201 KAR 30:050, Section 7.~~

~~(2) Distance education course approval shall not be available for qualifying education under 201 KAR 30:050, Sections 2 and 3, or 201 KAR 30:190.~~

~~(3)~~] [~~Distance education courses that involve~~] less than two (2) hours of credit shall not be approved.

~~(2)~~[~~(4)~~] Distance education shall not be allowed for the Appraiser Qualification Board National Uniform Standards of Professional Appraisal Practice seven (7) hour update, [~~or~~] the fifteen (15) hour class, or the seven (7) hour update or fifteen (15) hour class [~~or their~~] equivalent content as approved by the Appraisers Standard Board of the Appraisal Foundation.

Section 3. Standards for Distance Education Course Approval. (1) To qualify for [~~continuing~~] education credit, each distance education course, with information that specifically outlines the content of the course, shall be submitted for approval by the board in advance of the presentation of the course in accordance with this administrative regulation.

(2) The education provider applying for approval shall complete and submit the following:

(a) The "Distance Education Course Approval Application"; and

(b) The "Distance Education Instructor Application".

(3) Board approval shall be given to a distance education course which provides [~~the board finds to provide~~] competent instruction in real estate appraisal [~~so as~~] to establish, maintain, and increase the student's skill, knowledge, and competency in real estate appraising

(4) The content of a distance education course shall be reviewed to ensure that the course contributes to the licensee's professional knowledge and competence and for compliance with this administrative regulation.

(5) Course reviewers.[-]

(a) The course shall be reviewed by a distance education course delivery consultant and two (2) appraisal content reviewers appointed by the board.

1. The distance education course delivery consultant appointed shall be an academic educator with demonstrated competency in the distance education field.

2. The appraisal content reviewers shall consist of one (1) educator who is academically qualified in appraisal subjects and one (1) member who holds a certified general real property appraisal certification.

(b) A report of findings and of the reviewers shall be consolidated into a recommendation for approval or disapproval and delivered to the board within forty-five (45) days of receipt of a complete edition of the course.

(6) Each applicant who submits a distance education course for approval shall submit a letter of approval, to the board from the International Distance Education Certification Center (IDECC) and the Appraiser Qualifications Board of the Appraiser Foundation, for each [continuing] education course being applied for approval [by the board from the International Distance Education Certification Center (IDECC) and the Appraiser Qualifications Board of the Appraisal Foundation].

(7) Every distance education course shall include a final examination that shall be [is]:

(a) Administered after the completion of the course by a proctor approved by the board in accordance with [the provisions of] Section 5 of this administrative regulation; and

(b) A comprehensive assessment of the student's overall mastery of the materials presented in the course.

Section 4. Provider Approval. (1) Credit for the classroom hour requirement for [continuing] education courses delivered via distance education may be obtained from the following:

(a) A college or university;

(b) A community or junior college;

(c) A real estate appraisal or real estate related organization;

(d) A state or federal agency or commission;

(e) A proprietary school; or

(f) An education provider approved by the board In accordance with [under] 201 KAR 30:150.

(2) Credit shall [may] be granted for continuing education distance education courses that are consistent with the purposes of continuing education and that cover real estate appraisal related topics including:

(a) Ad valorem taxation;

(b) Arbitration;

(c) Business courses related to the practice of real estate appraisal;

(d) Development cost estimating;

(e) Ethics and standards of professional practice;

(f) Land use planning, zoning, and taxation;

(g) Management, leasing, brokerage, and timesharing;

(h) Property development;

(i) Real estate appraisal;

(j) Real estate financing and investment;

(k) Real estate law;

(l) Real estate litigation;

(m) Real estate related computer applications;

(n) Real estate securities and syndication; or

(o) Real property exchange.

(3) Credit shall [may] be granted for qualifying education distance education courses that cover Required Core Curriculum topics listed in 201 KAR 30:190, Section 8 [outlined in 201 KAR 30:190, Section 7].

Section 5. Instructors and Proctors. (1) An instructor of a distance education course shall:

(a) Hold a Certified General Real Property Appraiser Certification or Certified Residential Real Property Appraiser Certification with a minimum of five (5) years of experience and competency in the specific area of appraisal subject being taught;

(b) Not have been found by the board to have violated the requirements of KRS 324A.050 or 201 KAR Chapter 30 [the administrative regulations promulgated pursuant to KRS Chapter 324A], and

(c) Submit a copy of the instructor's curriculum vitae and appraisal certification.

(2) If an instructor is replaced [(d) If instructors are changed] or added, the credentials of the new instructor [instructors] shall be submitted for approval before that instructor may [they can] teach a course.

3(a) A proctor shall be [(2)(a) A proctor is] the board approved individual responsible for supervising the distance education course examination.

(b) Proctors shall not be subject to the same requirements [qualifications] as those for distance instructors specific in subsections (1) and (2) of this section [outlined in Section 5(1) above].

(c) A proctor shall not be:

1. A licensed real estate salesperson or broker;

2. A licensed or certified real property appraiser;

3. Professionally affiliated with a real estate sales or real property appraisal office or business;

4. A member of the student's family; and [Related to the student by blood or marriage; or]

5. Professionally or personally associated [personal or business] with the student [either personally or by business relationship].

(d) A proctor may be selected from different [many difference] professions, including:

1. A university, college, or community college professor or instructor;

2. A registered public librarian;

3. A public school administrator;

4. A Notary Public;

5. An attorney; or

6. A nominee of the provider approved by the board.

(e) The proctor shall:

1. Verify that the person taking the examination is the person registered for the course by confirmation;

a. With a picture ID;

b.[,] With another identification document, including driver's license or[,] student ID card; or

c.[, or] By familiarity;

2. Observe the student taking the exam;

3. Assure that the student does all the work alone [himself or herself] without aids of any kind, including books, notes, conversation with others, or any other external resource;

4. Verify that the calculator used during the exam shall be [any calculator is] a nonprogrammable, hand-held calculator;[-]

5. Provide for the administration of a printed (hard copy) or CD-ROM based final examination;[-]

6. Provide the student with the URL for the course examination which shall be supplied by the provider If [when] a request for the examination is received from the student;

7. Assure that the student adheres to the time limit requirement specified for the examination;

8. Assure that the examination shall be completed in one (1) sitting;

9 a. Assure [See] that, if there is an [any] interruption, the board shall be [is] notified that the examination was interrupted and[,] the reason for the interruption; and

b.[, and] The board, or its designee, shall approve the request to resume; and[-]

10. Upon completion of the examination, submit a certificate which confirms that the proctor [he or she] verified the identity of the student, that the examination was completed on the date assigned during the time permitted, and that the student has done all the work alone [himself or herself] without aids of any kind, including books, notes, conversation with others, or any other external resource while taking the examination, including access to Internet search engines or Web sites [web pages] other than [that displaying] the examination.

Section 6. Course Delivery Medium. (1) A course delivery system [All course delivery systems] shall contain provisions for interactivity including:

(a) Instructor feedback with a response time of no more than two (2) business days from [to] student lesson assignment, quiz submissions, and inquiries;

(b) Readily available opportunity for student inquiry and [shall be readily available and identified for] general questions concerning the course;

(c) [Provision for] Timely clarification of confusing points or[,] errors in the study text; and [or a combination of each,]

(d) Instructor's review of a student's activity in the course [shall be reviewed by the instructor] at least every thirty (30) days to assess progress [and he shall] determine the cause of potential delays in the student's completion of the course

(2) The provider shall provide the board's course reviewers with:

(a) Two (2) full copies of the courseware with free access to the course text, assignments, quizzes, and final examination; and

(b) The URL and any username or password required for free access, if Internet course delivery shall be [is] used.

Section 7. Record Keeping and Reports. (1) The provider shall furnish to the board notification identifying the student, along with the name of the course in which the student is enrolled, as each enrollment is received by the provider.

(2) At the conclusion of the course, the student shall submit a Distance Education Student Independent Work Certification [of Independent Study] for the course.

(3) Upon the completion of the final examination, the proctor shall submit a Distance Education Proctor's Examination [Proctor's] Certification [of the student's independent work and timely completion of the examination].

(4) A Distance Education Course Evaluation [comprehensive evaluation] of the student's [overall] on-line experience during the course shall be submitted at the conclusion of the course [using board-approved forms or provider forms containing essentially the same evaluation criteria].

(5) A Certificate of Completion shall be delivered to the board and the student upon successful completion of the course and a satisfactory score on the final examination containing, at [as] a minimum, the information on the Real Estate Appraisers Board form.

Section 8. Fees. The following nonrefundable fees shall be paid in connection with distance education courses submitted for approval by the board:[-]

(1) $200 for review of each distance education delivery system submitted for approval; and

(2) $150 for each individual course submitted for content and time delivery review and approval by the board.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Distance Education Course Approval Application", (2005);

(b) "Distance Education Student Independent Work Certification", (2005);

(c) "Distance Education Proctor's Examination Certification", (2005); [and]

(d) "Distance Education Course Evaluation", (2005); and

(e) "Distance Education Instructor Application", (2007).

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RUSSELL SLOAN, Chair

APPROVED BY AGENCY: May 14, 2007

FILED WITH LRC: May 15, 2007 at noon

CONTACT PERSON: Larry Disney, Executive Director, Kentucky Board of Real Estate Appraisers, 2624 Research Park Drive, Suite 204 Lexington, Kentucky 40511, phone (859) 543-8943, fax (859) 543-0028

KENTUCKY OFFICE OF HOMELAND SECURITY
Office of the 911 Coordinator
Commercial Mobile Radio Service Emergency Telecommunications Board
(As Amended at ARRS, July 9, 2007)

202 KAR 6:020. CMRS provider [carrier] cost recovery.

RELATES TO: KRS 65.7621-65.7643, [9 U.S.C. Sections 1-16], 47 U.S.C. [Sections] 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633

NECESSITY, FUNCTION, AND CONFORMITY: KRS 64.7631(4) [65.7631(3)] requires the CMRS Board to distribute a portion of the revenues deposited into the CMRS fund to CMRS providers (carriers) licensed to do business in the Commonwealth, solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order. KRS 65.7633 requires the CMRS Board to promulgate administrative regulations to implement KRS 65.7621 to 65.7643. This administrative regulation establishes the process by which CMRS carriers may obtain cost recovery for those expenses.

Section 1. A provider [carrier] shall file a cost recovery plan with the CMRS Board in order to receive reimbursement for NRCs and RCs.

Section 2. Cost Recovery Plan Submission. (1) Upon receipt of a written request for wireless E911 [E9-1-1] service from a PSAP (public safety answering point) that has been certified by the board in accordance with KRS 65.7631(5)(a) [65.7631(4)(a)], the CMRS carrier shall:

(a) Acknowledge receipt of the request back to the PSAP within thirty (30) days; and

(b) Develop a comprehensive detailed plan for implementation of E911 [E9-1-1] service for:

1. The requesting PSAP; or

2. The appropriate service area if the CMRS carrier's switch serves more than one (1) PSAP.

(2) A CMRS provider [carrier] shall provide the technical aspects of the plan to the requesting certified PSAP. The CMRS provider [carrier] shall submit the plan and the associated cost structure to the board, including a completed "Kentucky CMRS Provider [Carrier] Data Sheet". The board shall request from the provider [carrier], if necessary to reach a decision:

(a) Additional information; or

(b) A presentation.

(3) Only carrier costs directly attributable to wireless E911 [E9-1-1] call completion shall be considered for recovery, in accordance with Section 8 of this administrative regulation.

Section 3. Cost Recovery Plan Requirements. A plan submitted to the board shall contain the following information:

(1) The provider's [carrier's] good faith estimate of its total cost recovery reimbursement claim for providing wireless E911 [E9-1-1] service in the area served by the requesting PSAP or the appropriate service area for the carrier's switch;

(2) Specific detail for each NRC and RC the carrier expects to recover;

(a) An RC shall be described as subscriber-based or nonsubscriber-based;

(b) An RC shall be based on a calendar month unless a provider[. If a carrier] chooses a different period on which to base its RCs, If a different period is chosen, the provider shall state the period used and the reasons for using that period[, the period used and the logic employed shall be identified];

(3) A description of the technology solution the CMRS provider [carrier] has elected to implement and the projected implementation dates;

(4) A map or other detailed description of the coverage area affected by the plan;

(5) A list of the PSAPs affected by the provider [carrier], and

(6) The carrier must identify the name(s) and office(s) [office] of the individual(s) who is authorized by the carrier to submit sworn paid invoices to the board for reimbursement. [The method by which the carrier will identify the persons authorized to submit sworn paid invoices to the board for reimbursement.]

Section 4. Cost Recovery Plan Approval. (1) A cost recovery plan submitted to the CMRS Board shall be stamped "Confidential" and proprietary information received shall be filed and maintained so as to preserve its confidentiality in accordance with KRS 65.7639.

(2) A cost recovery plan submitted to the board shall be approved or disapproved within ninety (90) days of its receipt by a simple majority vote of the board.

(3) Within ten (10) business days of its approval or disapproval, notice of the decision shall be sent to the **provider** [carrier] and affected PSAPs, in writing, by certified mail, return receipt requested.

Section 5. Rejection of a Cost Recovery Plan. (1) If a plan is rejected, the board shall include with the decision specific reasons for its rejection.

(2) The carrier may submit a revised plan to the board.

(3) The **provider** [carrier] may appeal the board's rejection in accordance with KRS Chapter 13B.

Section 6. Implementation of Additional Service Using an Approved Plan. (1) After initial approval of a CMRS **provider** [carrier's] plan by the board, if the **provider** [carrier] wishes to implement service to an additional area in the state using the existing approved plan, the carrier:

(a) Shall send a letter to the board, by certified mail, return receipt requested, proposing the **provider's** [carrier's] intention to use an approved plan for the implementation of additional service;

(b) Shall include with the letter to the board a map of the area to be served by the planned additional implementation; **and**[,]

(c) Need not make an additional presentation to the committee if the board agrees that the **provider's** [carrier's] intention fits within the existing approved plan.

(2) The board shall:

(a) Decide within ninety (90) days of its receipt of the **provider's** [carrier's] letter if it agrees that the **provider's** [carrier's] intention to use an approved plan is appropriate for the additional service implementation;

(b) Within ten (10) business days of its decision, notify the **provider** [carrier], in writing, by certified mail, return receipt requested; and

(c) Accept the cost recovery outlined in the approved plan as sufficient to submit a claim for reimbursement.

(3) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the board shall:

(a) Within ten (10) business days of its decision, notify the **provider** [carrier], in writing, by certified mail, return receipt requested, identifying its specific concerns; and

(b) Schedule the earliest possible date to meet with the carrier and discuss the identified concerns.

(4) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the **provider** [carrier] may appeal the board's decision in accordance with KRS Chapter 13B.

Section 7. Revision of an Approved Plan. (1) In addition to the process established in Section 6 of this administrative regulation, after a cost recovery plan is approved, a subsequent change may be requested by either the CMRS **provider** [carrier] or the board.

(2) The board may review an existing plan **and request** [requesting] re-substantiation, new documentation, and reapproval of an existing cost recovery plan, or may revoke approval of a plan as necessary, to maintain the integrity of:

(a) The wireless **E911** [E9-1-1] system as new technologies are deployed; and

(b) The CMRS fund.

(3) A **provider** [carrier] may submit a revised plan or a change in reimbursement rate as business needs and new technologies dictate.

(4) The party requesting revision of a plan shall send written notice of the requested changes to the other party by certified mail, return receipt requested.

(5) An existing approved plan shall remain in effect until a review and decision regarding a requested change is made.

(6) Except as stated in subsection (7) of this section, if the board revokes approval of a plan, reimbursements from the CMRS fund shall cease immediately, except for RCs and NRCs for which the carrier is obligated by a previously signed contract.

(7) Failure of a carrier to respond in writing to a board request within the time frame indicated in the request, may be considered cause for the board to revoke approval of a previously approved plan and to cease reimbursement payments to the carrier.

Section 8. Appropriate Costs for Recovery. (1) For the purpose of differentiating between CMRS carrier costs and PSAP costs, the point of demarcation shall be the selective router of the contracted wireline E9-1-1 service provider, or similarly placed functional equipment within the E9-1-1 call completion hierarchy. The board shall determine, based upon industry standards, what equipment is to be considered "similarly placed functional equipment".

(2) Recoverable RCs and NRCs shall include:

(a) Trunking;

(b) Connection fees between carrier switches or other interface equipment to a selective router;

(c) Facilities: T-1's, selective router ports;

(d) Routing charges;

(e) Operations;

(f) Engineering;

(g) Switch upgrades;

(h) Network design;

(i) Test plan development;

(j) P-ANI administration,

(k) Database management;

(l) Reporting requirements,

(m) Software required for the operation of wireless E-911;

(n) Call counting;

(o) Amortization and carrying costs; [and]

(p) Costs of [for] complying with CMRS audit, and

(q) Other costs **attributed to wireless E911 call completion and approved by the board**. The CMRS **provider** [carrier] shall provide full rationale for other costs submitted.

(3) Submission of costs for activities that occurred more than twenty-four (24) months prior to submission of an invoice by the carrier to the CMRS board shall not be reimbursed.

Section 9. Use of Reimbursed Funds. A CMRS carrier shall use money received from the CMRS fund only for those expenditures and purposes authorized in KRS **64.7631(4)** [65.7631(3)], listed in invoices accepted by the board and as previously authorized in an approved cost recovery plan.

Section 10. Claims for Reimbursement. (1) After a cost recovery plan is approved, a CMRS **provider** [carrier] may file a claim for reimbursement of NRCs and RCs defined in the plan by submitting an invoice or other documentation, as defined in the plan.

(2) An invoice submitted by a CMRS **provider** [carrier] which is consistent with the then-current approved plan shall be paid by the board.

(3) A carrier may appeal a rejected invoice in accordance with KRS Chapter 13B.

(4) The board shall suspend payment of a claim, including a claim previously approved but unpaid by the board, from a carrier who fails to comply with the requirements for remittance as specified by KRS 65.7635, until the carrier complies.

Section 11. Amount of Reimbursement. (1) The amount of payments by the board to a carrier shall be determined by one (1) of the following methods, as set out in the approved cost recovery plan:

(a) By submission of NRCs necessary for the realization of the carrier's approved plan and actually incurred by the carrier;

(b) By submission of the predefined calendar period's nonsubscriber-based RCs;

(c) By submission of the predefined calendar period's subscriber-based RCs; or

(d) By a combination of methods in paragraphs (a), (b), and (c) of this subsection, as previously approved by the board.

(2) To document costs requested to be reimbursed, a carrier shall submit:

(a) A sworn paid invoice for actual costs or purchases from other vendors or suppliers; and approved documentation for internal costs (e.g., time slips for actual work performed by the carrier's employees) sufficient to establish the internal costs as reasonable and necessary; or

(b) other appropriate documentation approved by the board as part of the cost recovery plan.

(3) The subscriber count reported monthly by a carrier with the CMRS fund remittance and reporting process shall be used to determine the total for subscriber-based RCs. The subscriber count shall be subject to audit by the board, in accordance with KRS 65.7629(13).

Section 12. Payment Frequency. At least once per calendar quarter, the CMRS Board shall approve and pay claims submitted by carriers for reimbursement that are consistent with approved cost recovery plans.

Section 13. Prorated Payments. If the board determines that the total amount of invoices submitted by CMRS carriers and approved by the board exceeds the amount of revenue in the fund in a month or other payment period, the board shall pay a prorated share of the available funds to carriers who have submitted board-approved invoices for the relevant period. The priority of payment shall be as follows:

(1) The balance of approved unpaid invoices, including additional carrying charges at a rate established in the approved plan, shall be paid first, and

(2) Current invoices approved by the board shall then be paid.

Section 14. Amortization of Costs. (1) Nonrecurring costs may be amortized over a period not longer than twenty-four (24) months, until the amounts claimed for NRCs are fully recouped by the CMRS carrier.

(2) The board may reject a cost recovery plan or revised cost recovery plan if the amortization period of NRCs selected by the carrier is not long enough to ensure adequate monthly surcharge revenues with which to meet the carrier's monthly reimbursement demands.

(3) The interest rate for carrying unreimbursed NRCs shall be established and fully documented in the carrier's cost recovery plan.

(4) The actual cost of borrowing to fund NRCs shall be a legitimate recoverable RC.

(5) Only NRCs shall be amortized.

Section 15. Incorporation by Reference. (1) "Kentucky CMRS Provider [Carrier] Data Sheet" (07/09/2007)[(04/04/2000)] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the CMRS Board, 200 Mero Street [21 Millcreek Park], Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 30 p.m.

KENNETH O. MITCHELL, Executive Director

APPROVED BY AGENCY: May 14, 2007

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KENTUCKY OFFICE OF HOMELAND SECURITY
Office of the 911 Coordinator
Commercial Mobile Radio Service Emergency Telecommunications Board
(As Amended at ARRS, July 9, 2007)

202 KAR 6:030. Confidential and proprietary information.

RELATES TO: KRS 65.7621-65.7643, [9 U.S.C. Sections 1-16,] 47 U.S.C. [Sections] 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(1), 65.7639

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(1) requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. In order to comply with KRS 65.7629, 65.7639, and administrative regulations promulgated by the CMRS Board, it is necessary that the board and PSAPs (public safety answering points) certified by the board obtain proprietary information [deemed proprietary by the CMRS carriers or LECs]. KRS 65.7639 protects such information and governs the form and manner of its release to others. This administrative regulation establishes the procedures by which the board shall [will] insure the security of confidential or proprietary information [deemed confidential or proprietary].

Section 1. Identification of Confidential or Proprietary Information. (1) Information identifying subscribers shall be held confidential, as proprietary information belonging to the disclosing CMRS provider, by the board and each of its employees. Identifying information shall include a subscriber's:

(a) Name;

(b) Telephone number; and

(c) Billing address; [and]

[(d) Other data specified in KRS 65.7639.]

(2) A CMRS provider [carrier], PSAP, or local exchange carrier (LEC) [LEC] shall explicitly and clearly mark as confidential, prior to submission, information supplied and regarded by the provider [carrier], PSAP, or LEC as proprietary.

(3) The board shall not regard as confidential or proprietary the identification of a provider [carrier] or LEC or a subsidiary of either.

Section 2. Allowable Uses of Confidential and Proprietary Information. The use of confidential or proprietary information shall be strictly limited to:

(1) Disburse funds as provided in KRS 65.7631(1), (2), [and] (3), and (4);

(2) Discharge the duties of the board and its agents as provided in KRS 65.7629(1), (3), (8), (12), and (13)(a);

(3) Process revenues remitted to the board by CMRS providers [carriers]; and

(4) Manage calls by PSAPs in accordance with KRS 65.7639.

Section 3. Management of Confidential and Proprietary Information in the Possession of the Board. (1) The board shall instruct, in writing, all board personnel, agents of the board, and PSAPs as to the proper management and uses of confidential and proprietary information.

(2) A nondisclosure agreement shall be signed by each board member, employee, and agent of the board who may handle or possess information deemed confidential or proprietary.

(3) Material deemed confidential or proprietary shall be specifically and clearly identified by the board.

(4) Only persons specifically authorized by the board shall open board correspondence. Correspondence received by postal mail, electronic mail, or facsimile and opened by an unauthorized person shall:

(a) Not be copied,

(b) Be immediately returned to its container; and

(c) Immediately forwarded to the board.

(5) Proprietary and confidential information in the possession of the board, a member, agent, or any other person or entity shall be stored in a secure room, vault, or container. The room, vault, or container shall be kept locked when unattended or outside of nor-

mal business hours. Electronic files containing confidential or proprietary information shall be secured utilizing established mainframe protocols, stand alone servers, secured sockets, or password protected desktop applications, as appropriate.

(6) Access to confidential and proprietary information shall be limited to persons specifically authorized by KRS 65.7639.

(7) Each copy of confidential or proprietary information may be distributed as necessary for the efficient discharge of board duties and responsibilities.

(a) Copies shall be explicitly and clearly marked as confidential.

(b) A person possessing copies of documents containing confidential or proprietary information shall be responsible for document security.

(c) A copy no longer required shall be:[.]

1. Returned to the board immediately; or

2. Destroyed immediately in such a manner as to prevent its reconstruction.

(8) An original record or file no longer needed for processing shall be:

(a) Sealed securely, retaining the notice of confidentiality, and transferred:

1. To a facility accessible only to the board administrator; or

2. With board approval, to the state archival and record storage center;

(b) With board approval, destroyed; or

(c) Returned to the proprietor.

Section 4. Breaches of Security. (1) The board shall take immediate action to determine the cause, impact, and persons involved in a security violation of the confidential information entrusted to the board.

(2) Unauthorized access to confidential or proprietary information shall be promptly reported to the board in writing.

(3) A report of a security breach shall include a description of the incident, specific identification of the information disclosed, identification of each person who accessed the records, and the purposes for which access was obtained.

(4) The board shall notify an affected party immediately, providing a copy of the written report detailing the incident.

(5) [Willful or negligent disregard of the provisions of this administrative regulation by:

(a)] A board member, agent, or employee **who willfully or negligently disregards a provision of this administrative regulation shall be dismissed or requested to resign** [shall be deemed cause for dismissal or request for resignation, as appropriate to the violator's position.

(b) A PSAP or its employee shall be deemed cause for the board to decertify the involved PSAP].

(6) **If a PSAP or its employee willfully or negligently disregards a provision of this administrative regulation, the board shall decertify the PSAP.**

(7) A board member, agent, or employee who has been dismissed or asked to resign for willful or negligent disregard of the provisions of this administrative regulation may appeal the dismissal in accordance with KRS Chapter 13B.

(8)[(7)] A PSAP that has been decertified for willful or negligent disregard of the provisions of this administrative regulation may appeal the decertification in accordance with KRS Chapter 13B.

KENNETH O. MITCHELL, Executive Director

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KENTUCKY OFFICE OF HOMELAND SECURITY
Office of the 911 Coordinator
Commercial Mobile Radio Service Emergency Telecommunications Board
(As Amended at ARRS, July 9, 2007)

202 KAR 6:060. PSAP pro rata fund disbursement.

RELATES TO: KRS 65.7621-65.7643, [9 U.S.C. Sections 1-16,] 47 U.S.C. [Sections] 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the CMRS Board to establish procedures and guidelines for reviewing, evaluating, and approving or disapproving disbursements **under KRS 65.7631(2), (3), and (4)** from the CMRS fund and requests for disbursements. This administrative regulation establishes the pro rata fund disbursement process.

Section 1. [Initial Revenues Collected by the CMRS Board. (1) Monthly revenues remitted to the CMRS Board for pro rata distribution prior to April 1, 2000 shall be frozen in order to provide sufficient opportunity for PSAPs to certify for disbursement of CMRS funds.

(2) On or before June 30, 2000, the CMRS Board shall establish a date before which a PSAP wishing to receive a pro rata portion of the funds shall have been certified by the board. Not less than ninety (90) days prior to the established date, notice of the date shall be:

(a) Posted on the CMRS Board's web site; and

(b) Distributed in writing to:

1. All PSAPs known to the board;

2. County judge executives;

3. Mayors of class six (6) cities or above, and

4. Mayors of urban county governments.

(3) Each PSAP certified by the board by the established date shall receive, within forty-five (45) days of the established date, a pro rata disbursement from the frozen funds in accordance with the "PSAP pro rata formula" in KRS 65.7631(2)(a).]

Section 2. Ongoing] Revenues Collected by the CMRS Board. (1) Monthly revenues remitted to the CMRS Board after March 31, 2000 shall be disbursed to PSAPs **(public safety answering points)** in quarterly payments.

(2) [Each PSAP certified by December 31, 2000 shall be eligible for the first and second quarterly payment of funds which shall be those funds collected during the second and third calendar quarter of the year 2000.

(3) Following the first and second quarterly payment described in subsection (2) of this section,] Any PSAP **that** [which] is certified by the end of a calendar quarter shall be eligible to receive a pro rata share of funds collected during that quarter. Payments will be made within forty-five (45) days of the end of each calendar quarter.

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KENTUCKY OFFICE OF HOMELAND SECURITY
Office of the 911 Coordinator
Commercial Mobile Radio Service Emergency Telecommunications Board
(As Amended at ARRS, July 9, 2007)

202 KAR 6:070. PSAP workload fund disbursement.

RELATES TO: KRS 65.7621, 65.7627, 65.7629(5)-(8), 65.7631**(3)**[(2)], 65.7643, [9 U.S.C. 1-16,] 47 U.S.C. 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7633(2)(c) requires the CMRS Board to establish procedures and guidelines for reviewing, evaluating, and approving or disapproving disbursement from the CMRS Fund and requests for disbursements under, KRS 65.7631(2), [and] (3), and (4). This administrative regulation establishes the wireless workload fund disbursement process.

Section 1. [~~Initial Revenues Collected by the CMRS Board. (1) Monthly revenues remitted to the CMRS Board prior to July 1, 2001 for distribution according to the "wireless workload formula", KRS 65.7631(2)(b), shall be disbursed in one (1) payment.~~

~~(2) A PSAP certified by the CMRS Board on October 1, 2001 shall be eligible to receive a disbursement under this section.~~

~~(3) Not later than July 1, 2001, the CMRS Board shall notify each PSAP of the October 1, 2001 deadline by:~~

~~(a) Posting it on the CMRS Board's web site, http://cmrsboard.state.ky.us; and~~

~~(b) Distributing it in writing to:~~

~~1. The county judge-executive of each jurisdiction without a certified PSAP;~~

~~2. The mayor of each class six (6) city, or above, in a jurisdiction without a certified PSAP;~~

~~3. The mayor of an urban-county government in a jurisdiction without a certified PSAP;~~

~~4. The executive director of each area development district; and~~

~~5. Every PSAP currently certified.~~

~~(4) Each PSAP certified by the board shall receive a disbursement from the workload funds in accordance with KRS 65.7631(2)(a), within 120 days after June 30, 2001.~~

~~Section 2. Ongoing~~] Revenues Collected by the CMRS Board. (1) Wireless workload revenues remitted to the CMRS Board during a calendar quarter [~~after June 30, 2001~~] shall be disbursed in one (1) payment to PSAPs (public safety answering points) within 120 days of the end of that same calendar quarter.

(2) Each PSAP certified by the end of a calendar quarter shall be eligible for a disbursement of funds received during that same calendar quarter.

Section 2 [~~3~~] Determination of the Zip Codes or Portions thereof in a PSAP's Jurisdiction. (1) Upon initial certification, [~~Not later than June 30, 2001,~~] the board shall submit to each PSAP [~~certified or with application pending,~~] a list of zip codes within the PSAP's jurisdiction. A zip code with at least three (3) percent of its total area in a jurisdiction shall be included in the list. Percentage allocation shall be determined by the Commonwealth [~~Governor's~~] Office for Technology, Division of Geographic Information [~~Office of Geographic Information Systems~~], and communicated to the board.

(2) If three (3) percent or more of a zip code is in more than one (1) PSAP's jurisdiction, the CMRS Board shall adjust the allocation determined by the Commonwealth Office for Technology so that the percentage of zip code area allocated to the PSAP shall be equivalent to the percentage of CMRS connections within the zip code area.

(3) Within forty-five (45) days of receipt of the zip code list from the CMRS Board, each PSAP shall acknowledge, in writing to the CMRS Board whether the[~~, that:~~

~~(a) The~~] list of zip codes in the PSAP's jurisdiction is correct and complete[~~; and~~

~~(b) If a three (3) percent or more of a zip code is in more than one (1) PSAP's jurisdiction, the percentage of the zip code area allocated by the CMRS Board to the PSAP shall be equivalent to the percentage of CMRS connections within the zip code area~~].

(4)[~~(3)~~] Within forty-five (45) days of receipt of the zip code list from the CMRS Board, a PSAP may dispute zip code or percentage allocations by notifying the board and any other PSAP affected by the dispute, in writing, of the disputed zip code.

(a) Within five (5) working days of receipt of a notice of dispute, the board shall notify each PSAP affected by the dispute, by certified mail, return receipt requested. The affected PSAPs shall:

1. Negotiate a mutually agreeable resolution to the identified problem; and

2. Notify the CMRS Board of the result.

(b) If within the following thirty (30) days the CMRS Board is not notified of a mutually-agreeable resolution between the affected PSAPs, [~~regarding the identified problem,~~] the board shall determine the percentage of the identified zip code to be allocated to each PSAP.

(5)[~~(4)~~] A PSAP may request a change to a previously-approved zip code allocation by submitting a written request to the CMRS Board and the other affected PSAPs no later than thirty (30) days after the end of a calendar quarter.

(a) Within five (5) working days of receipt of a request, the board shall notify each affected PSAP, by certified mail, return receipt requested. The affected PSAPs shall:

1. Negotiate a mutually-agreeable resolution to the requested change; and

2. Notify the CMRS Board of the result.

(b) If, within the following thirty (30) days, the board is not notified of a mutually-agreeable resolution between the affected PSAPs, the board shall determine the percentage of the zip code to be allocated to each PSAP.

(6)[~~(5)~~] A PSAP may appeal the final allocation of a zip code assignment in accordance with KRS Chapter 13B.

[~~(6) The zip codes and percentage allocations of zip codes, as determined in this section, shall be used to determine the number of CMRS connections for each PSAP, as required by Section 4(3) of this administrative regulation.~~]

Section 3.[~~4.~~] Calculation of Individual PSAP Disbursements Under the PSAP Wireless Workload Formula. (1) Within ninety (90) days after the end of calendar quarter, the board shall determine a value for each CMRS connection by dividing the total amount of funds remitted to the board during the collection period established for this disbursement by the total number of CMRS connections, as submitted in a quarterly report by the CMRS providers.

(2) The board shall multiply the value for each connection by the number of connections in each zip code, as reported in the quarterly reports by the CMRS providers.

(3) The CMRS Board shall divide the disbursement for a zip code that crosses a PSAP jurisdictional boundary according to the percentages established in Section 2[3] of this administrative regulation.

(4) A PSAP's workload disbursement shall consist of the total amounts for all zip codes or percentage of zip codes whose areas are served by a PSAP, as determined by subsections (2) and (3) of this section.

(5) Disbursement amounts attributed to zip codes whose allocation of CMRS connections is disputed by a PSAP shall be reserved by the board in the PSAP volume account until an [a] allocation for that zip code is determined.

(a) Disputed funds shall remain in the CMRS fund accounts until disbursed

(b) Interest accrued by disputed funds shall be deposited in the CMRS Fund and thereafter distributed in accordance with KRS 65.7631 [~~65.7627~~].

(c) Upon resolution of a dispute, the reserved funds shall be disbursed to the PSAPs with the next regular workload fund disbursement.

KENNETH O. MITCHELL, Executive Director

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KENTUCKY OFFICE OF HOMELAND SECURITY
Office of the 911 Coordinator
Commercial Mobile Radio Service Emergency Telecommunications Board
(As Amended at ARRS, July 9, 2007)

202 KAR 6:100. PSAP Phase II certification.

RELATES TO: KRS 65.7621-65.7643, [9 U.S.C. 1-16,] 47 U.S.C. 153(27), 332(d)
STATUTORY AUTHORITY: KRS 65.7631(5)(e) [65.7631(4)(e)], 65 7633(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(5)(e) [65.7631(4)(e)] states that no PSAP shall be eligible to request or receive a disbursement from the CMRS fund unless and until the PSAP demonstrates that the PSAP has made the investment which is necessary to allow the PSAP to receive and utilize the data elements associated with wireless E911 service. KRS 65.7633 requires the CMRS Board to implement the provisions of KRS 65.7621 to 65.7643 through the promulgation of administrative regulations. This administrative regulation establishes the process by which a PSAP shall demonstrate its ability to receive and utilize the data elements associated with wireless E911 service.

Section 1. [PSAPs Not Certified for CMRS Fund by June 30, 2004. After June 30, 2004,] PSAPs not currently certified by the CMRS Board in accordance with 202 KAR 6 050 shall not be eligible for disbursement from the CMRS fund as provided in KRS 65.7631(3)[(2)] until they successfully complete both the requirements established in 202 KAR 6.050 and relevant sections of this administrative regulation.

Section 2. PSAPs Already Certified by the CMRS Board. (1) In order to maintain continued eligibility for CMRS funds, PSAPs that are currently certified by the CMRS Board in accordance with 202 KAR 6:050 shall no later than February 1, annually submit:
(a) An updated CMRS PSAP Certification Review Data Sheet, including any changes to the documentation supplied in their original Phase I Application; and
(b) Based on an actual tabulation of call traffic for at least the first week in each calendar quarter:
1. An annual count of wireless 911 calls received by the PSAP on dedicated 911 trunks; and
2. A count of nonwireless 911 calls received by the PSAP on dedicated 911 trunks.
(2) Certified PSAPs shall [no later than July 1, 2004]:
(a) Make operational the hardware, software, and database necessary to receive and utilize the data elements associated with Phase II wireless E911 [911] service;
(b) Notify the board, in writing, of their readiness to receive and utilize the data elements associated with Phase II wireless E911 service; and
(c) Supply to the board the following documentation:
1. An [copy in] electronic copy[form] of the [a] digital map of the PSAP's response area jurisdiction which meets the mapping criteria ["][Initial][Mapping Criteria"] in [accordance with] Section 3(1)(a) and Section 3(2) of this administrative regulation;
2. An electronic copy of the digital street centerlines which meets the mapping criteria ["][Initial][Mapping Criteria"] in [accordance with] Section 3(1)(c) and Section 3(2) of this administrative regulation; and
3.a. Copies of return receipts and letters sent ["]certified["] mail requesting Phase II service from all wireless carriers licensed to operate in the PSAP's jurisdiction response area; or
b. Documentation from a wireless carrier licensed to operate within the PSAP response area that Phase II service is operational or has been requested by the PSAP;
4. Evidence from the LEC, 911 service provider, and any contracted 3rd party database services that all network elements necessary to the provision of Phase II wireless E911 service are operational; and
5. Evidence from hardware and software vendors that all hardware and software necessary to utilize Phase II calls is now operational.
(3) Certified PSAPs shall present to the board updated mapping data sets once a year during the month of October [no later than January 1, 2006:
(a) Have completed all of the elements listed insubsections (1) and (2) of this section;
(b) Supply to the board a copy in electronic form of a digital map of the PSAP's response area which meets the "Final Mapping Critena" in accordance with Section 3(2) of this administrative regulation; and
(c) Supply to the board updated data sets aslistened listed in subsection (2)(c)1 and paragraph (b) of this subsection twice a year, no later than the first week of the second and fourth calendar quarter.]

Section 3. Mapping Criteria. Regardless of the source of its data, a [certified] PSAP certified for CMRS funding shall be responsible for the accuracy of the geographic data and supporting databases used by the PSAP and those supplied to the CMRS Board.
(1) [Initial mapping criteria. Initial] Maps in use by PSAPs shall include the following [elements]:
(a) PSAP response boundaries and contact information, to include PSAP name, contact personnel, and ten (10) digit contact telephone number with twenty-four (24) hour, seven (7) day availability;
(b) Cell site location [and cell face propagation] as used within the PSAP for Phase I mapping;
(c) Road centerlines that have been [shall be] prepared and attributed with only items as outlined in the CMRS Board "PSAP Mapping Requirements" Table [Street centerline geographic database for the response area attributed with a single validated street name per street segment containing predirectional (pre_dir), name of road (road_name), type of road or street (road_type), postdirectional (post_dir), and local identifier (local_id) as defined within Table 2 of the "Standards for Address-Enabled Road Centerlines" adopted by the Geographic Information Advisory Council (GIAC),] and
(d) Address data that is [shall be] ninety (90) [ninety-five (95)] percent accurate upon audit as outlined in Section 4[(4)(b)] of this administrative regulation.
(2) The geospatial positional accuracy of all geographic elements submitted shall be within thirty-three (33) feet of its true location, plus the accuracy of the device used to conduct the test, for ninety (90) percent of all tested sites. [Final mapping criteria. Maps in use by PSAPs after the January 1, 2006 deadline shall include:
(a) The elements described under initial mapping criteria of this section;
(b) Data shall be ninety-five (95) percent accurate as outlined in Section 4(4)(b) of this administrative regulation; and
(c) Street centerlines shall be prepared to accuracy standards and attributed with all items as outlined in Table 2 of the "Standards for Address-Enabled Road Centerlines" adopted by the Geographic Information Advisory Council (GIAC).]

Section 4. Geospatial Audit Requirements and Methodology. (1) [After July 1, 2004,] The CMRS Board shall audit the use and quality of geospatial data supplied by certified PSAPs. The PSAP is not responsible for the accuracy of data provided by wireless carriers.
(2) Audits shall be conducted:
(a) Utilizing equipment and methodology as approved and supplied by the CMRS Board or its designee and calibrated according to manufacturer's specifications; and
(b) Using tests approved be approved by the board which includes GIS professionals and representatives of PSAPs certified for CMRS funding
(3) Audits shall verify that upon receipt of a wireless 911 call the PSAP's mapping component shall:
(a)1. Display [The PSAP's mapping component displays] the X, Y coordinates on digital base maps used by the PSAP; [and]
2.[(b)] Identify [identifies] the incoming 911 call on the map display; and

3.[(e)] Identify the closest assigned address to the X,Y coordinates provided; or

(b)[(d)] [or (b)] In the absence of the X, Y coordinate information, identify [the PSAP's mapping component identifies] the cell site, and cell-face [and cell-face propagation area of the incoming 911 call].

(4) Each PSAP's mapping shall be tested for the accuracy of road centerline data. A minimum of twenty (20) randomly-selected address points shall be tested in each PSAP response area. **If a PSAP response area encompasses multiple counties, a sampling of a minimum of twenty (20) randomly-selected address points per county shall be tested. Tested locations shall:**

(a) Be [Tested points shall be] distributed across the PSAP response area to yield a valid cross section of urban and rural environments;[In those cases where PSAP response areas encompass multiple counties a sampling of a minimum of twenty (20) locations per county shall be tested] [Beginning on January 1, 2006, audits also shall

(a) Verify the PSAP's mapping component and shall display both the caller's location and the closest assigned address to the location supplied by the 911 call; and

(b) Test for the following elements:

1. A minimum of 100 points shall be tested in each PSAP response area of which at least ten (10) points shall be within each unincorporated area, ten (10) points in each county seat and ten (10) points within each urban area of all fifth class cities within the PSAP's response area][.]

(b)[2.] Plot [Tested locations shall plot] on the correct side of the street as shown on the base map data supplied by the PSAP;

(c)[3.] Plot [Tested locations shall plot] within the correct cross streets as shown on the base map data supplied by the PSAP; and

(d)[4.] Plot [Tested locations shall plot] within one-tenth (1/10) of a mile of their location on PSAP supplied base maps.

Section 5. Audit Results. (1) The CMRS Board shall notify PSAPs, in writing, within ten (10) business days of audit results.

(2) If a PSAP fails to meet the audit requirements, the CMRS Board shall allow[.

(a) Allow] the PSAP ninety (90) days from receipt of the audit notification to remedy the identified problems.[; and]

(3)[(b)] After receipt of the PSAP response, the board may schedule a reaudit.

(4)[(3)] A PSAP shall be decertified for CMRS funding if it:

(a) Fails to remedy the problems identified by the board; or

(b) Fails a reaudit.

(5)[(4)] The board shall notify the PSAP Director, in writing, return receipt requested, of its decision to decertify the PSAP.

Section 6. Appeals of Decertification. (1) A PSAP may request a review of its decertification by submitting a request in writing, within thirty (30) days of receipt of a decertification notice.

(a) The decertification shall be suspended pending the review by the board.

(b) The board shall schedule the requested review at a regularly scheduled board meeting, no later than ninety (90) days after receipt of the PSAP request.

(c) The board shall notify the PSAP of the scheduled review date, in writing, at least thirty (30) days prior to the meeting.

(d) After the board's review, the board shall notify, in writing, the PSAP of its decision within ten (10) business days.

(2) A PSAP that has been decertified may further appeal its decertification in accordance with KRS Chapter 13B.

Section 7. Status of PSAP Funds During an Appeal. (1) During a PSAP's appeal of its decertification, the PSAP's pro rata and workload payments shall be held in reserve in the appropriate CMRS fund account until resolution of all appeals by the PSAP.

(a) If the PSAP's appeal is successful, the reserved funds shall be disbursed to the PSAP with the next regular disbursement of each account.

(b) If the PSAP's appeal is unsuccessful, the reserved funds shall be disbursed to the remaining certified PSAPs with the next regular payments from each account in accordance with KRS 65.7631(3)[(2)].

(2) All interest accrued by reserved funds shall be distributed among the normal CMRS accounts in accordance with KRS 65.7631 [65.7627].

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "CMRS PSAP Certification Review" 07/14/2003 [(07/14/2003)]; and

(b) The CMRS Board "PSAP Mapping Requirements" table, 06/29/2007 [as provided by the CMRS Board]. [Table 2 from the "Standards for Address-enabled Road Centerlines" as approved by the Geographic Information Advisory Council (GIAC) on December 19, 2002.]

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KENNETH O. MITCHELL, Executive Director
APPROVED BY AGENCY: May 14, 2007
FILED WITH LRC: May 15, 2007 at noon
CONTACT PERSON: Kenneth O. Mitchell, Executive Director, Office of the 911 Coordinator, Administrator, CMRS Board, 200 Mero Street, Frankfort, Kentucky 40601, phone 502 564-3911, fax 502 696-5293.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, July 9, 2007)

501 KAR 6:020. Corrections policies and procedures.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any of its divisions. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) "Department of Corrections Policies and Procedures, July 9 [May 14][January 9], 2007" are incorporated by reference. Department of Corrections Policies and Procedures include:

1.2	News Media (Amended 8/9/05)
1.4	The Monitoring and Operation of Private Prisons (Amended 8/9/05)
2.1	Inmate Canteen (Amended 2/15/06)
2.2	Warden's Fund (Amended 10/14/05)
3.1	Code of Ethics (Amended 07/09/07[5/14/07][8/9/05])
3.3	Holding of Second Jobs by Corrections' Employees (Amended 07/09/07[5/14/07][8/9/05])
3.5	Sexual Harassment and Anti-Harassment (Amended 8/9/05)
3.10	Appearance and Dress for Nonuniformed Staff (Amended 11/9/04)
3.11	Drug Free Workplace Employee Drug Testing (Amended 07/09/07[5/14/07][8/9/05])
3.17	Uniformed Employee Dress Code (Amended 4/10/06)
3.20	Communication and Recording Devices (Amended 6/3/05)
5.1	Research and Survey Projects (Amended 8/9/05)
6.1	Open Records Law (Amended 5/14/07[8/9/05])
8.2	Fire Safety (Amended 2/15/06)
8.7	Notification of Extraordinary Occurrence (Amended 12/13/05)
9.4	Transportation of Inmates to Funerals or Bedside Visits (Amended 11/9/04)

9.5 Execution (Amended 9/20/05)
9 6 Contraband (Amended 12/13/05)
9.8 Search Policy (Amended 1/9/07)
9.13 Transport to Court - Civil Action (Amended 07/09/07[Added 5/14/07])
9.18 Informants (Amended 10/14/05)
9.19 Found Lost or Abandoned Property (Amended 10/14/05)
9.20 Electronic Detection Equipment (Amended 10/14/05)
10.2 Special Management Inmates (Amended 11/15/06)
10.3 Safekeepers and Contract Prisoners (Amended 9/15/04)
11.2 Nutritional Adequacy of Inmate Diet (Amended 8/9/05)
11.4 Alternative Dietary Patterns (Amended 6/3/05)
13.1 Pharmacy Policy and Formulary (Amended 11/15/06)
13.2 Health Maintenance Services (Amended 1/9/07)
13.3 Medical Alert System (Amended 10/14/05)
13.5 Advance Healthcare Directives (Added 4/12/05)
13.6 Sex Offender Treatment Program (Amended 8/9/05)
13.7 Involuntary Psychotropic Medication (Amended 10/14/05)
13.8 Substance Abuse Treatment Program (Amended 07/09/07[5/14/07][Effective 12/17/08])
13.9 Dental Services (Amended 10/14/05)
13.10 Serious Infectious Disease (Amended 12/13/05)
13.11 Do Not Resuscitate Order (Amended 8/9/05)
14.1 Investigation of Missing Inmate Property (Amended 10/14/05)
14.2 Personal Hygiene Items (Amended 10/14/05)
14.3 Marriage of Inmates (Amended 10/14/05)
14.4 Legal Services Program (Amended 07/09/07[5/14/07][2/13/04])
14 5 Board of Claims (Amended 10/14/05)
14 6 Inmate Grievance Procedure (Amended 07/09/07[5/14/07][1/9/07])
14.7 Sexual Abuse Assault Prevention and Intervention Programs (Amended 11/15/06)
15.1 Hair, Grooming and ID Card Standards (Amended 12/13/05)
15.2 Rule Violations and Penalties (Amended 11/15/06)
15.3 Meritorious Good Time (Amended 12/13/05)
15.5 Restoration of Forfeited Good Time (Amended 5/14/07[10/14/05])
15.6 Adjustment Procedures and Programs (Amended 10/14/05)
15.7 Inmate Account Restriction (Amended 11/15/06)
15.8 Unauthorized Substance Abuse Testing (Amended 10/14/05)
16.1 Inmate Visits (Amended 07/09/07[5/14/07][10/14/05])
16.2 Inmate Correspondence (Amended 11/15/06)
16.3 Inmate Access to Telephones (Amended 6/3/05)
16.4 Inmate Packages (Amended 07/09/07[5/14/07][11/15/06])
17.1 Inmate Personal Property (Amended 5/14/07[11/15/06])
17.2 Assessment Center Operations (Amended 11/15/06)
17.3 Controlled Intake of Inmates (Amended 1/12/05)
17.4 Administrative Remedies: Sentence Calculations (Amended 4/10/06)
18.1 Classification of the Inmate (Amended 07/09/07[5/14/07][10/14/05])
18.2 Central Office Classification Committee (Amended 10/14/05)
18.5 Custody and Security Guidelines (Amended 07/09/07[5/14/07][10/14/05])
18.7 Transfers (Amended 07/09/07[5/14/07][10/14/05])
18 9 Out-of-state Transfers (Amended 2/15/06)
18.11 Placement for Mental Health Treatment in CPTU, KCIW-PCU, or KCPC (Amended 1/9/07)
18.12 Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill (Amended 2/15/06)
18.13 Population Categories (Amended 07/09/07[5/14/07][Effective 8/15/01])
18.15 Protective Custody (Amended 11/15/06)
18.16 Information to the Parole Board (Effective 11/15/06)
18.17 Interstate Agreement on Detainers (Amended 07/09/07[5/14/07][Effective 2/17/95])
18.18 International Transfer of Inmates (Amended 5/14/07[Effective 8/15/01])
19.1 Governmental Services Program (Amended 07/09/07[5/14/07][11/15/06])
19.2 Sentence Credit for Work (Added 2/13/04)
19.3 Inmate Wage/Time Credit Program (Amended 10/14/05)
20.1 Educational Programs and Educational Good Time (Amended 4/10/06)
22.1 Privilege Trips (Amended 10/14/05)
23.1 Religious Programs (Amended 1/9/07)
25.1 [Gratuities (Effective 7/28/92)]
25.2 Public Official Notification of Release of an Inmate (Amended 10/14/05)
25.3 Prerelease Program (Effective 11/15/06)
25.4 Institutional Inmate Furloughs (Amended 07/09/07[5/14/07][10/14/05])
25 6 Community Center Program (Amended 07/09/07[5/14/07][Effective 11/15/06])
25 8 Extended Furlough (Amended 4/12/05)
25.10 Administrative Release of Inmates (Amended 10/14/05)
25.11 Victim Notification (Amended 10/14/05)
26.1 Citizen Involvement and Volunteer Service Program (Added 9/15/04)

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JOHN D. REES, Commissioner
APPROVED BY AGENCY: May 14, 2007
FILED WITH LRC: May 14, 2007, at 4 p.m.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, July 9, 2007)

501 KAR 6:030. Kentucky State Reformatory.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439 640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky State Reformatory.

Section 1. Incorporation by Reference. (1) Kentucky State Reformatory policies and procedures July 9 [May 4], 2007 [December 13, 2005], are incorporated by reference. Kentucky State Reformatory policies and procedures include:

[KSR 01-00-09 Public Information and News Media Relations (Amended 10/14/05)
KSR 01-00-10 Entry Authorization for All Cameras and Tape Recorders Brought into the Institution (Amended 10/14/05)]
KSR 02-00-01 Inmate Canteen (Amended 05/04/07[10/14/05])
KSR 02-00-03 Screening Disbursements from Inmate Personal Accounts (Amended 07/09/07[05/04/07] [10/14/05])
KSR 02-00-11 Inmate Personal Accounts (Amended 07/09/07[05/04/07] [10/14/05])
[KSR 02-00-12 Institutional Funds and Issuance of Checks (Amended 10/14/05)
KSR 05-00-03 Management Information Systems (Amended 10/14/05)]
KSR 02-00-13 Inmate Canteen Committee (Added 07/09/07)
KSR 06-00-03 Kentucky Open Records Law and Release of

	Institutional and Medical Information (Amended 05/04/07) [12/13/05]
KSR 08-00-08	Death of an Inmate and Notification of Inmate Family About Critical Medical Emergency (Amended 07/09/07[05/04/07] [10/14/05])
KSR 09-00-28	Restricted Areas (Amended 05/04/07 10/14/05)
KSR 09-00-30	Parole Board (Amended 05/04/07)
[KSR 10-00-10	Special Management - Inmate Legal Access]
KSR 10-01-02	Segregation - General Operational Procedures (Amended 07/09/07[05/04/07])
KSR 10-01-03	Special Management Unit - Inmate Tracking System and Record [Records] System (Amended 07/09/07[05/04/07])
[KSR 10-01-04	Special Management - Administrative Segregation
KSR 10-01-05	Special Management - Disciplinary Segregation
KSR 10-01-06	Special Management - Protective Custody
KSR 10-01-08	Special Management - Safekeepers and Pretrial Contract Hold Status Inmates]
KSR 10-01-09	Special Management Population [-] Hold Ticket Inmates (Amended 07/09/07[05/04/07])
[KSR 10-01-13	Special Management - Property Room Access
KSR 10-02-07	Correctional Psychiatric Treatment Unit Inmate Tracking System and Record System]
KSR 10-02-08	Correctional Psychiatric Treatment Unit (Amended 07/09/07[05/04/07])
KSR 11-00-01	Meal Planning and Procedure (Amended 05/04/07[10/14/05])
[KSR 11-00-04	Dining Room Rules and Dress Code for Inmates (Amended 10/14/05)]
KSR 11-00-05	Food Service Department Clothing Issuance, Laundry and Sanitation (Amended 05/04/07[12/13/05])
KSR 11-00-06	Health Standards and Regulations for Food Service Employees (Amended 07/09/07[05/04/07] [10/14/05])
KSR 12-00-03	State and Personal Hygiene Items Issued to Inmates (Amended 07/09/07[05/04/07])
[KSR 12-00-05	Sanitation Policy and Standards]
KSR 12-00-07	Regulations for Inmate Barbershop (Amended 05/04/07)
KSR 12-00-09	Treatment of Inmates with Body Lice (Amended 05/04/07)
KSR 13-00-03	Medication for Inmates Leaving Institution Grounds (Amended 10/14/05)
KSR 13-00-04	Medical and Dental Care (Amended 10/14/05)
KSR 13-00-05	Medical Records (Amended 12/13/05 10/14/05)
KSR 13-00-08	Institutional Specimen Processing Center (Amended 10/14/05)
KSR 13-00-09	Institutional Pharmacy Procedures (Amended 10/14/05)
KSR 13-00-10	Requirements for Medical Personnel (Amended 10/14/05)
KSR 13-00-11	Health Evaluation (Amended 10/14/05)
KSR 13-00-12	Vision Care and Ophthalmology Services (Amended 10/14/05)
KSR 13-00-14	Periodic Health Examinations for Inmates (Amended 10/14/05)
KSR 13-00-15	Medical Alert System (Amended 10/14/05)
KSR 13-00-17	Special Care (Amended 10/14/05)
KSR 13-02-01	Mental Health Services (Amended 10/14/05)
KSR 13-02-02	Mentally Retarded Inmates (Amended 10/14/05)
KSR 13-02-03	Suicide Prevention and Intervention Program (Amended 10/14/05)
KSR 13-02-08	Offender Observer Program (Amended 12/13/05)
KSR 14-00-01	Inmate Rights
KSR 14-00-02	Americans with Disabilities Act Inmate Program Access
KSR 15-00-02	Regulations Prohibiting Inmate Control or Authority Over Other Inmate(s)
KSR 15-00-06	Inmate I D. Cards
KSR 15-00-07	Inmate Rules and Discipline - Adjustment Committee Procedures
KSR 15-00-08	Firehouse Living Area
KSR 15-00-09	Use of Tobacco Products for Inmates and Staff
KSR 15-00-10	Program Services for Special Housing Placement
KSR 15-01-01	Operational Procedures and Rules and Regulations for Unit A, B & C: Functions of Assigned Personnel
KSR 15-01-02	Operational Procedures and Rules and Regulations for Unit A, B, & C: Staff Operational Procedures
KSR 15-01-03	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Rules and Regulations
KSR 15-01-04	Operational Procedures and Rules and Regulations for Unit A, B & C: Institutional Medical and Fire Safety Service: Unit Application
KSR 15-01-05	Operational Procedures Rules and Regulations for Unit A, B, & C: Institutional Inmate Services
KSR 15-01-06	Operational Procedures and Rules and Regulations for Unit A, B & C: Inmate Honor Housing Criteria and Regulations
KSR 16-00-02	Inmate Correspondence and Mailroom Operations
KSR 16-00-03	Inmate Access to Telephones
KSR 16-01-01	Visiting Regulations
KSR 16-01-03	Night Visit Regulations
KSR 17-00-05	Assessment and Orientation, Consent Decree Notification to Inmates
KSR 17-00-07	Inmate Personal Property
KSR 17-00-08	Repair of Inmate Owned Appliances by Outside Dealers
KSR 18-00-04	Intratransfers, Identification Department, Departure - Admission and Discharge
KSR 18-00-05	Transfer of Residents to Kentucky Correctional Psychiatric Center, and Referral Procedure for Residents Adjudicated Guilty but Mentally Ill
KSR 18-00-06	Classification
KSR 18-00-07	Kentucky State Reformatory Placement Committee
KSR 19-00-01	Inmate Work Incentives
KSR 19-00-02	On-the-job (OJT) Training Program
KSR 19-00-03	Safety Inspections of Inmate Work Assignment Locations
KSR 19-00-05	Unassigned Status/Placement (Amended 10/14/05)
KSR 20-00-01	Technical and Adult Basic Level Learning Center Programs
KSR 20-00-04	Criteria for Participation in A College Program
KSR 20-00-06	English as a Second Language
KSR 21-00-01	Legal Aide Office and Inmate Law Library Services and Supervision
KSR 21-00-02	Inmate Library Services
KSR 21-00-03	Library Services for Special Management Unit (SMU)
KSR 21-00-05	Library Services for Correctional Psychiatric Treatment Unit
KSR 22-00-03	Inmate Organizations
KSR 22-00-07	Inmate Magazine
KSR 22-00-08	Privilege Trips
KSR 23-00-02	Chaplain's Responsibility and Inmate Access to Religious Representatives
KSR 23-00-03	Religious Programming
KSR 24-00-02	Substance Abuse and Chemical Dependency Program
KSR 25-00-01	Discharge of Inmates to Hospital or Nursing Home
KSR 26-00-01	Volunteer Services Program

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JOHN D. REES, Commissioner

APPROVED BY AGENCY: May 4, 2007
FILED WITH LRC: May 4, 2007 at 4 p m.
CONTACT PERSON: Karen S. Howard, Justice and Public Safety Cabinet, Office of Legal Services, 125 Holmes Street, 2nd Floor, Frankfort, Kentucky 40601, phone 502 564-8215, fax 502 564-6686.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, July 9, 2007)

501 KAR 6:070. Kentucky Correctional Institution for Women.

RELATES TO: KRS Chapters 196, 197, 439
STATUTORY AUTHORITY: KRS 196 035, 197.020, 439.470, 439.590, 439.640
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196 035, 197.020, 439.470, 439 590, and 439 640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Kentucky Correctional Institution for Women.

Section 1. Incorporation by Reference. (1) Kentucky Correctional Institution for Women Policies and Procedures, **July 9, 2007** [~~May 14, 2007~~][~~October 11, 2005~~] are incorporated by reference. Kentucky Correctional Institution for Women Policies and Procedures include:

KCIW 01-03-01	Communications Between Staff and Inmates (Amended 6/10/03)
KCIW 01-04-02	Annual Report (Added 3/13/03)
KCIW 01-05-01	Staff Meeting and Reporting Schedules (Added 3/13/03)
KCIW 01-08-01	News Media Access (Totally Revised 3/13/03)
KCIW 01-08-02	Institutional Tours (Amended 6/10/03)
KCIW 01-09-01	Cooperation with Outside Agencies (Added 3/13/03)
KCIW 01-10-01	Services From Outside Agencies (Added 3/13/03)
KCIW 01-11-01	Annual Planning Document (Amended 6/10/03)
KCIW 02-01-01	Comprehensive Insurance Coverage (Amended 6/10/03)
KCIW 02-02-01	Fiscal Management. Audits (Totally Revised 3/13/03)
KCIW 02-02-02	Fiscal Management: Budgets (Added 3/13/03)
KCIW 02-02-04	Institution Purchasing Procedures (Totally Revised 3/13/03)
KCIW 02-03-01	Nonexpendable Personal Property (Amended 6/10/03)
KCIW 02-03-02	Inventory and Control of Stores (Totally Revised 3/13/03)
KCIW 02-04-01	Accounting Procedures (Totally Revised 3/13/03)
KCIW 02-05-01	Inmate Canteen and Staff Canteen (Totally Revised 3/13/03)
KCIW 02-06-01	Interest Bearing Account (Amended 6/10/03)
KCIW 03-01-01	Expense reimbursement (Amended 6/10/03)
KCIW 03-02-01	General Guidelines for Staff (Amended 6/10/03)
KCIW 03-02-02	Inclement Weather and Emergency Conditions (Amended 6/10/03)
KCIW 03-03-01	Employee Grievance Procedure (Amended 3/13/03)
KCIW 03-05-01	Employee Personnel File (Amended 3/13/03)
KCIW 03-09-01	Payroll Personnel Manning (Amended 3/13/03)
KCIW 03-10-01	Selection, Promotion and Lateral Entries (Amended 6/10/03)
KCIW 03-11-01	Merit Registers (Amended 3/13/03)
KCIW 03-13-01	Kentucky Employee Assistance Program (KEAP) (Amended 3/13/03)
KCIW 04-01-01	Advisory Training Committee (Added 3/13/03)
KCIW 04-02-01	Employee Training Requirements (Amended 6/10/03)
KCIW 05-01-01	Research and Evaluation (Amended 6/10/03)
KCIW 05-02-01	Management Information System (Amended 6/10/03)
KCIW 05-03-01	Outside Consultation, Research, and Student Interns (Amended 6/10/03)
KCIW 06-01-01	Inmate Records (Totally Revised 3/13/03)
KCIW 06-01-02	Transfers (Amended 6/10/03)
KCIW 06-01-03	Storage of Expunged Records (Totally Revised 3/13/03)
KCIW 07-01-01	Preventive Maintenance Plan (Added 3/13/03)
KCIW 07-03-01	Wastewater Treatment Plant. Operations (Added 3/13/03)
KCIW 08-02-01	Fire Safety Practices (Added 3/13/03)
KCIW 08-02-02	Fire Evacuation Routes (Added 3/13/03)
KCIW 08-03-01	Hazardous Communication Program (Added 3/13/03)
KCIW 09-01-02	Inmate Move Sheet (Added 3/13/03)
KCIW 09-06-04	Regulation of Inmate Movement (Added 3/13/03)
KCIW 09-07-02	Supervisory Staff Daily Inspections and Logs (Added 3/13/03)
KCIW 09-08-01	Tours of Living and Activity Areas (Added 3/13/03)
KCIW 09-10-02	Inmate Entry and Exit Procedure (Added 3/13/03)
KCIW 09-11-01	Prohibiting Inmate Authority Over Other Inmates (Added 3/13/03)
KCIW 09-12-01	Search Plan (Added 3/13/03)
KCIW 09-13-01	Tobacco Free Environment **(Amended 7/9/07** [~~(Added 6/14/07)~~]
KCIW 09-13-02	Alcohol Detection (Added 3/13/03)
KCIW 10-01-01	Special Management Unit General Operations and Regulations (Amended 6/10/03)
KCIW 10-01-02	Special Management Unit Programs, Placement and Review (Amended 6/10/03)
KCIW 10-01-04	Special Security (Totally Revised 3/13/03)
KCIW 11-01-01	Food Service Operation Inspections (Totally Revised 3/13/03)
KCIW 11-01-02	Budgeting, Accounting, and Purchasing for Food Service (Totally Revised 3/13/03)
KCIW 11-02-01	Menu Preparation and Special Diets (Totally Revised 3/13/03)
KCIW 11-03-01	General Guidelines for Food Service Operations (Amended 6/10/03)
KCIW 11-04-01	Health Regulations and General Guidelines for the Food Service Area (Totally Revised 3/13/03)
KCIW 11-05-01	Knife Control and Daily Inventory (Added 3/13/03)
KCIW 11-07-01	Special Religious Diets (Totally Revised 3/13/03)
KCIW 12-01-01	Laundry, Clothing, and Personal Hygiene (Added 3/13/03)
KCIW 12-02-01	Pest Control (Added 3/13/03)
KCIW 12-03-01	Water Supply and Waste Disposal (Added 3/13/03)
KCIW 12-04-04	Sanitation Plan (Added 3/13/03)
KCIW 13-01-01	Provision of Medical and Dental Care (Amended 10/11/05)
KCIW 13-01-02	Health Appraisal and Periodic Exams (Amended 10/11/05)
KCIW 13-01-03	Pharmaceutical Services (Amended 10/11/05)
KCIW 13-02-01	Family Notification (Amended 10/11/05)
KCIW 13-03-01	Emergency Care (Amended 10/11/05)
KCIW 13-03-02	Convalescent and Chronic Care (Amended 10/11/05
KCIW 13-04-02	Psychiatric and Psychological Services (Amended 10/11/05)
KCIW 13-07-01	Detoxification and Alcohol or Chemical Dependency (Amended 10/11/05)
KCIW 13-09-01	Suicide Prevention and Intervention Program (Amended 10/11/05)
KCIW 13-13-01	Healthcare Records (Amended 10/11/05)
KCIW 13-14-01	Health Services (Amended 10/11/05)

KCIW 14-01-02 Inmate Rights (Totally Revised 3/13/03)
KCIW 14-02-01 Access to Legal Resources and Services (Totally Revised 3/13/03)
KCIW 14-04-01 Inmate Grievance Procedure (Totally Revised 3/13/03)
KCIW 15-06-01 Restriction Guidelines (Totally Revised 3/13/03)
KCIW 16-01-01 Inmate Correspondence (Amended 6/10/03)
KCIW 16-02-01 Inmate Access to Telephones (Totally Revised 3/13/03)
KCIW 16-03-01 Inmate Visiting Regulations (Totally Revised 3/13/03)
KCIW 16-03-02 Unauthorized Items (Totally Revised 3/13/03)
KCIW 16-04-01 Inmate Indigent and Low Income Fund (Totally Revised 3/13/03)
KCIW 16-05-01 Inmate Packages (Totally Revised 3/13/03)
KCIW 17-01-01 Assessment and Classification Center Programs (Totally Revised 3/13/03)
KCIW 17-02-01 Admission Procedure (Amended 6/10/03)
KCIW 17-05-01 Inmate Personal Property (Totally Revised 3/13/03)
KCIW 18-01-01 Inmate Classification (Added 3/13/03)
KCIW 18-01-03 Honor Program (Totally Revised 3/13/03)
KCIW 18-05-01 Special Needs Inmates (Totally Revised 3/13/03)
KCIW 19-01-01 Inmate Work and Program Assignments (Amended 6/10/03)
KCIW 19-02-01 Governmental Services (Added 3/13/03)
KCIW 19-03-01 Landscape and Maintenance Work Details (Totally Revised 3/13/03)
KCIW 19-04-01 Correctional Industries (Added 3/13/03)
KCIW 20-01-01 Education Programs (Totally Revised 3/13/03)
KCIW 21-01-01 Library Services (Added 3/13/03)
KCIW 21-02-01 Staff Library (Added 3/13/03)
KCIW 22-01-01 Recreation and Inmate Activity (Added 3/13/03)
KCIW 22-01-02 Arts and Crafts Program (Added 3/13/03)
KCIW 22-01-04 Inmate Club Activities (Totally Revised 3/13/03)
KCIW 23-01-01 Religious Services (Totally Revised 3/13/03)
KCIW 23-01-02 Institutional Prayer (Added 3/13/03)
KCIW 24-01-01 Social Services Program (Added 3/13/03)
KCIW 24-02-01 Substance Abuse Program (Added 3/13/03)
KCIW 25-02-01 Temporary Release and Community Release (Amended 6/10/03)
KCIW 25-02-02 Furloughs (Totally Revised 3/13/03)
KCIW 25-03-01 Funeral Home Visit or Bedside Visit (Amended 6/10/03)
KCIW 26-01-01 Volunteer Service Program (Amended 6/10/03)

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JOHN D. REES, Commissioner
APPROVED BY AGENCY: May 14, 2007
FILED WITH LRC: May 14, 2007, at 4 p.m.

JUSTICE AND PUBLIC SAFETY CABINET
Department of Corrections
(As Amended at ARRS, July 9, 2007)

501 KAR 6:240. Home incarceration using an approved monitoring device.

RELATES TO: KRS Chapters 196, 197, 439, 532
STATUTORY AUTHORITY: KRS 196 035, 197.020, 439.346, 439.348, 439 470, 532.260
NECESSITY, FUNCTION, AND CONFORMITY: KRS 196 035, 197.020, 439.470, and 532.260 authorize the Justice and Public Safety Cabinet and Department of Corrections to promulgate administrative regulations concerning the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole. The administrative regulation incorporates by reference the policies and procedures governing the use of approved monitoring devices for inmate release to home incarceration and for the supervision of offenders on probation and parole

Section 1. Incorporation by Reference. (1) "Department of Corrections policies and procedures for home incarceration using an approved monitoring device," July 9, 2007 [May 14, 2007],[October 10, 2006"] are incorporated by reference. These policies and procedures include:

25.12 Home Incarceration and Monitoring of Inmates (Amended 07/09/07 [5/14/07][10/10/06])
27-15-02 Curfew and Monitoring (Amended 8/9/05)

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JOHN D. REES, Commissioner
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JUSTICE AND PUBLIC SAFETY CABINET
Department of State Police
(As Amended at ARRS, July 9, 2007)

502 KAR 20:020. Detection of deception examiners [Examiners].

RELATES TO. KRS 329 010 -329 030, 42 U.S.C. 3796gg-8
STATUTORY AUTHORITY. KRS 15A.160, 329.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 and 329.030(6) require[provide that] the Secretary of the Justice and Public Safety Cabinet to promulgate[may establish rules and] administrative regulations establishing professional standards for detection of deception examiners [during their period of licensure to insure the examiner maintains adequate professional standards]. This administrative regulation establishes the practice requirements for detection of deception examiners.

Section 1. Definitions. (1) "Detection of deception examiner" is defined by KRS 329 010(1)
(2) "Secretary" is defined by KRS 329.010(5).
(3) "Sex crime" **means an offense or attempt to commit an offense defined in:**
(a) KRS Chapter 510;
(b) KRS 530.020;
(c) KRS 530.064(1)(a);
(d) KRS 531.310; or
(e) KRS 531.320. [is defined by KRS 17.500(8).]
(4) "Thorough investigation" means:
(a) Interviewing the victim, any witnesses, any potential witnesses, and the suspect, if possible;
(b) Submitting any evidence to the laboratory if appropriate; and
(c) Pursuing any leads identified during the investigation.

Section 2 Advertising, soliciting, and discrimination are prohibited as follows:
(1) An examiner shall not advertise in any manner which would tend to deceive or defraud the public.
(2) An examiner shall not publish or circulate any fraudulent, false, or misleading statements as to the skill or method of practice of any person or examiner.
(3) An examiner shall not claim superiority over other examiners as to [his] skill or method of practice.
(4) An examiner shall not divide fees, or agree to split or divide the fees received for detection of deception services with any person for bringing or referring a client.
(5) An examiner shall not attempt to solicit business as a result

of information or statements obtained from an examinee relating to the examinee's[his] past employment or employer.

(6) An examiner shall not refuse to render detection of deception services to or for any person solely on account of the race, color, creed, sex, or national origin of the person.

Section 3.[2.] (1) The examiner shall inform the prospective examinee that taking the detection of deception examination is a voluntary act and the examiner shall obtain the written consent of the examinee to undergo the examination.

(2) The examiner shall not conduct an examination on any person whom the examiner[he] believes, through observation or any other credible evidence, to be physically or psychologically unfit for the examination at that time.

(3) The examiner shall, immediately upon request of the examinee, terminate an examination in progress

(4) The examiner shall not render a verbal or written opinion based on chart analysis, until the examinee has had a reasonable opportunity to explain any reactions to pertinent questions.

(5) The examiner shall not interrogate or conduct an examination of an examinee's sexual behavior, or ask any questions that can be construed as being sexually oriented or personally embarrassing to the examinee, regardless of marital status, unless the topic is a specific issue or unless it refers to the basic matter pertinent to the examination

(6) The examiner shall not conduct an examination if the examiner[when he] has reason to believe the examination is intended to circumvent or defy the law.

(7) The examiner shall not knowingly issue, or permit an employee to issue, a polygraph examination report which is misleading, biased, or falsified in any way. Each report shall be a factual, impartial, and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.

(8) The examiner shall not conduct a polygraph examination without first reviewing the issues to be covered during the examination and the general content of the questions to be asked during the examination with the examinee.

(9)(a) The examiner shall not render a conclusive verbal or written decision, based on chart analysis, as to the truthfulness or deception of the examinee without having administered three (3) or more polygraph charts using the same relevant test questions.

1. If after the examinee has submitted to **fewer than three (3) charts** [one (1) chart], the examiner[he] refuses to submit to additional charts, the results shall be recorded as no opinion.

2. The fact of the examinee's refusal shall be noted in the verbal or written report of the examination

(b) An examiner may terminate[This shall not preclude the examiner from terminating] an examination in progress at the examiner's[his own] discretion if, in the examiner's[when, in his] opinion, the examinee has become physically or psychologically unfit, or has become uncooperative to the point that it would be useless to continue the examination.

(10)(a) All questions and answers asked during a polygraph examination shall be marked on the polygraph charts at the appropriate place on the chart where the question was asked and the answer given.

(b) If a question sheet with numbered questions is used, the number of the asked question along with the answer given shall be noted and the question sheet shall be attached to the polygraph chart and made a part of the examinee's file.

(c) Each polygraph chart shall be identified as to the person being examined, the examiner, time and date of the examination, and the chart number.

(11)(a) The examiner shall not, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal, or psychiatric opinion or which would infringe upon areas under the cognizance of professionals in those fields.

(b) The examiner may describe[This shall not preclude the examiner from describing] the appearance or behavior of the examinee, if:

1. The information[this] is pertinent to the examination; and

2.[as long as] The examiner refrains from offering any diagnosis which the examiner[he] is professionally unqualified to make.

(12)(a) The examiner shall not offer testimony concerning the charts or conclusions presented by another examiner unless the examiner[he] is thoroughly familiar with the techniques and procedures used by the other examiner.

(b) An examiner may testify[This shall not prohibit an examiner from testifying] concerning the examiner's[his] independent examination of the same examinee

(13) An examiner shall[It shall be the duty of every examiner to] report to the cabinet any action or misconduct on the part of another examiner which would be in violation of the provisions of KRS Chapter 329 or 502 KAR Chapter 20[the administrative regulations promulgated thereof].

Section 4 **Detection of Deception Examinations**[3.] [Examinations] of Victims of Sex Crimes. (1) The victim of a sex crime has the right to refuse examination and shall be informed of this right. [The victim's consent to the examination shall be in writing and received before the examination begins.]

(2) An examination shall not be requested, required, or conducted of a sex crime victim as a condition for proceeding with the investigation of the crime.[Examinations shall not be conducted of victims of sex crimes, as defined in KRS 17.500, to verify a crime has occurred.]

(3) Except as provided by subsection (4) of this section, examination[Examinations] of a sex crime victim shall not be conducted unless

(a) The victim's consent to the examination is in writing and received by the examiner before the examination begins;

(b)1. The suspect has declined examination, has passed an examination or has been found unsuitable for an examination; or

2. After a thorough investigation, the suspect cannot be identified or located;

(c)[(b)] There is a clear issue to test on based on a thorough investigation[testable dichotomy for polygraph testing]; and

(d)[(c)] Before the examination, the investigating officer has provided the examiner with a signed, written document:

1. Describing any inconsistencies in the victim's allegation;

2. Stating if any inconsistency can be substantiated by existing physical or testimonial evidence;

3. **Listing investigative strategies which have been used in the case;**

4.[listing investigative strategies which have been used in the case, and] Declaring that the victim has not been told that the investigation would cease if the victim refuses to consent to an examination; and

5.[4.] Containing no[This signed, written document shall not contain any] reference to whether the victim is or is not behaving like a typical sexual assault victim, as scientific evidence has shown that behaviors of individual sexual assault victims vary widely and therefore cannot be described as typical.

(4)(a) A sex crime victim may request examination. The investigator may arrange for the requested examination and the examination may be conducted if

1. The request is voluntary and at the victim's own initiative;

2. It is documented in writing that the request is by the victim;

3. The written request is signed by the victim;

4. The written request is received by the examiner before the examination begins; and

5. The victim has an opportunity to consult with a victims' advocate prior to the examination

(b) An examination shall not be considered **to be** at the victim's request if the victim agrees to the examination in response to a request by the investigator to take an examination.

(5) Every reasonable attempt shall be made to avoid visible and audio contact **between** [by] the victim and suspect during the examination process. If contact is made, the examination shall be postponed and rescheduled for another date and time[The victim of a sex crime and the suspect shall not be tested in or be present in the same facility at the same time under any circumstance].

(6)[(5)] The victim shall be advised that at the victim's request, a victim advocate shall be allowed to watch the examination from a two (2) way mirror or by closed circuit television in real time. The examiner and the victim shall be the only two (2) individuals inside the examination room during the entire examination process, ex-

cept if a language interpreter is required.

(7)[(6)] At the beginning of the examination, the examiner shall advise the victim that the examination is a stressful experience and that if the victim feels uncomfortable at any time with the polygraph process, it shall be terminated immediately.

(8)[(7)] The victim shall not be interrogated under any circumstance. A post-examination debriefing shall be conducted to give the victim the opportunity to explain any unresolved responses on the examination. The victim shall be advised that upon the victim's request, a victim advocate shall be allowed to watch the debriefing session from a two (2) way mirror or closed circuit television.

(9)[(8)] The testing format utilized shall be a researched comparison/control[~~comparison and control~~] question format (CQT). The relevant questions shall be answered with a "yes" answer.

(10)[(9)] An irrelevant/relevant[~~Irrelevant and Relevant~~] question format shall not be utilized on any sex crime victim [~~of sexual assault~~].

(11)[(10)] Past sexual history of the victim shall not be explored by the examiner.

(12)[(11)] Sex related comparison/control[~~comparison and control~~] questions shall not be asked of the victim. Lie comparison questions excluding sex shall be used on sex crime victims.

(13)[(12)] At the end of the examination, the examiner shall advise the victim of the results.

(14)[(13)] Quality control of the examination shall be conducted in writing and maintained with the polygraph file at least until after adjudication of the case

(15)[(14)] The entire examination shall be videotaped with adequate picture and sound from the time the victim walks into the testing room until the victim leaves the testing room for the last time. There shall not be a break in the videotaping of the process. The videotape shall be maintained as evidence until at least the investigation is adjudicated.

Section 5 [4.] (1) The examiner shall maintain on file for at least two (2) years all records, papers, polygraph charts, consent to examination forms, notes, question lists or sheets, and reports of polygraph examinations that the examiner conducted [~~by him~~].

(2)(a) Except as provided in paragraph (b) of this subsection, an examiner who leaves the employment of another examiner, agency, firm, or company shall be allowed access, after showing reasonable cause, to the files of examinations that the examiner conducted [~~by him~~] during the two (2) year period prior to the date of the[~~his~~] request.

(b)[~~However,~~] Without the approval of the employing examiner, agency, firm, or company, the examiner shall not remove any of the material contained in the file or make notes of any of the information contained therein.

(3) The cabinet shall, if[~~at any time~~] there is just cause, inspect the records, reports, polygraph charts, and all paperwork connected with an[~~the~~] examination to determine if an examiner is conducting examinations in accordance with the provisions of KRS Chapter 329 and 502 KAR Chapter 20[~~administrative regulations promulgated by the cabinet~~].

Section 6 [5.] Continuing Education Requirements (1) Each examiner shall complete[~~provide proof of completion of~~] at least twenty (20) hours of instruction in subject matter relating directly to the polygraph profession during the licensing year. Acceptable polygraph training for purposes of this requirement shall be:

(a) Polygraph seminars, courses, or other training sponsored by any national polygraph association, state polygraph association, or American Polygraph Association accredited polygraph school;

(b) Any training in polygraphy sponsored by a law enforcement training academy approved by the secretary [~~of Justice~~] or his designee if[~~provided that~~] the instructor is certified by the Kentucky Law Enforcement Council,

(c) Training received during the course of internship established[~~stipulated~~] in 502 KAR 20:030 and approved by the Secretary [~~of Justice~~] in writing; or

(d) Any training directly relating to polygraph subject material which has been preapproved by the secretary [~~of Justice~~] or his designee in writing.

(2) [~~When~~] Each examiner submitting[~~submits~~] a request to renew the examiner's[~~his~~] license for the following year shall also submit proof of completion of the required instruction such as[~~,~~] a copy of the diploma, certificate, or other documentation confirming instruction and attendance [~~shall be submitted~~].

BG NORMAN E. ARFLACK, Secretary
JEFFREY T. MIDDENDORF, General Counsel
APPROVED BY AGENCY: May 9, 2007
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JUSTICE AND PUBLIC SAFETY CABINET
Kentucky Law Enforcement Council
(As Amended at ARRS, July 9, 2007)

503 KAR 1:170. Career Development Program.

RELATES TO: KRS 15.310
STATUTORY AUTHORITY: KRS 15.330(1)(d), (h)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.330(1)(d) authorizes the Kentucky Law Enforcement Council (KLEC) to establish and prescribe minimum standards and qualifications for voluntary career development programs for certified peace officers and telecommunicators. This administrative regulation establishes a Career Development Program for Kentucky certified peace officers and telecommunicators.

Section 1. Definitions. (1) "Chief executive" means the highest level position in a law enforcement agency with direct operational and administrative responsibility for the policies and performance of the agency.

(2) "Conceptual skills course" means a course that emphasizes planning, organization, goal setting abilities, or strategic orientation.

(3) "Executive" means a position in the immediate line of authority under the chief executive who has the delegated responsibility for operational and administrative functions of the agency or division [~~the immediate line of authority directly under the chief executive, holding the rank of major, deputy chief, chief deputy, assistant director, or above~~]

(4) "Human skills course" means a course relating to cultural diversity, problem solving, leadership, interpersonal communication, group communication, or training abilities.

(5) "KLEC" means the Kentucky Law Enforcement Council.

(6) "Manager" means a position within law enforcement or telecommunications:

(a) Between the executive and supervisor positions; and

(b) Which is responsible for the supervision of supervisory employees and may involve the planning, organization, public relations, discipline, or general administrative work.

(7) "Supervisor" means a position which:

(a) Is responsible for the direct supervision of nonsupervisory personnel; and

(b) May also perform line duties in law enforcement or telecommunications.

(8) "Technical skills course" means a course relating to operational or tactical abilities.

Section 2. Skill Area Determination. (1) Based on the definitions in Section 1 of this administrative regulation, the KLEC shall determine whether a law enforcement or telecommunications course should be categorized as a:

(a) Conceptual skills course;

(b) Human skills course; or

(c) Technical skills course.

(2) When a new course is approved or recognized by the KLEC, pursuant to 503 KAR 1:090 and 503 KAR 1:120, the council shall categorize the course in accordance with subsection (1) of this section.

(3) A law enforcement or telecommunications course may be categorized in up to two (2) different categories

Section 3. Application for Career Development Program. A peace officer or telecommunicator who wishes to apply for a par-

ticular career step certificate shall:

(1) Complete a "CDP-1 Participant Commitment Form", which shall include the following:

(a) Applicant's name and agency;

(b) Social Security number and date of birth;

(c) The program to which the **applicant** [~~participant~~] wishes to commit,

(d) Signature of the **applicant** [~~participant~~]; and

(e) Signature of the **applicant's** [~~participant's~~] agency head.

(2) Submit **one (1) of the following** [~~an~~] application **forms** [~~form~~] for the specific career development step **for** [~~to~~] which the participant wishes to apply:

(a) Intermediate Law Enforcement Officer;

(b) Advanced Law Enforcement Officer;

(c) Enforcement Officer Investigator;

(d) Law Enforcement Traffic Officer;

(e) Advanced Deputy Sheriff;

(f) Law Enforcement Supervisory;

(g) Law Enforcement Manager;

(h) Law Enforcement Executive;

(i) Basic Telecommunicator Certificate;

(j) Intermediate Telecommunicator;

(k) Advanced Telecommunicator;

(l) Telecommunications Manager/Director; or

(n) Law Enforcement Chief Executive;

(3) Include[~~. The application form shall include~~] the following information **on the application form**:

(a) Applicant's name and agency;

(b) Social Security number and date of birth;

(c) Date of employment with current agency;

(d) Current rank or title and date of promotion to that position;

(e) Employment history;

(f) Training history;

(g) Educational history;

(h) Signature of program applicant; and

(g) College and training credit hours applied to the requirements of the particular program to which the **applicant** [~~participant~~] wishes to apply**; and**[~~.~~]

(4)[~~(3)~~] Submit an official [a] copy of a transcript or other documentation showing that the applicant has successfully completed required

(a) KLEC-approved or recognized courses; and

(b) College courses.

Section 4. In-service Training, College, Out-of-state Work Experience, Retroactive Credit. (1) All in-service training applied toward a career development step shall be approved or recognized by the KLEC.

(2) A program participant shall not receive more than one (1) program credit for an in-service training course

(3) Retroactivity. Participants in the Career Development Program may be granted credit for college courses and KLEC-approved training received prior to the implementation of the program.

(4) Fifteen (15) hours of KLEC-approved classroom training may be substituted for one (1) hour of college credit by program participants.

(5) A program participant may apply out-of-state work experience toward the requirements of a career development step. To receive credit, the participant shall submit a written request describing the past experience and any supporting documentation to the KLEC for approval.

Section 5 Intermediate Law Enforcement Officer Certificate. To demonstrate proficiency in the Intermediate Law Enforcement Officer Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Sixty (60) percent (ninety-six (96) hours) shall be in technical skills development; and

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and **a bachelor's** [~~bachelors~~] degree;

(b) Four (4) years of experience and **an associate's** [~~associates~~] degree;

(c) Four (4) years of experience and ninety-five (95) hours of college credit;

(d) Five (5) years of experience and eighty (80) hours of college credit;

(e) Six (6) years of experience and sixty-five (65) hours of college credit;

(f) Seven (7) years of experience and fifty (50) hours of college credit, or

(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 6. Advanced Law Enforcement Officer Certificate. To demonstrate proficiency in the Advanced Law Enforcement Officer Career Step, a peace officer shall:

(1) Complete the Intermediate Law Enforcement Career Step;

(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which:

(a) Forty (40) percent (sixty-four (64) hours) shall be in technical skills development;

(b) Forty (40) percent (sixty-four (64) hours) shall be in human skills development; and

(c) Twenty (20) percent (32 hours) shall be in conceptual skills development; and

(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Four (4) years of experience and **a master's** [~~masters~~] degree;

(b) Six (6) years of experience and **a bachelor's** [~~bachelors~~] degree;

(c) Nine (9) years of experience and **an associate's** [~~associates~~] degree;

(d) Eight (8) years of experience and 110 hours of college credit;

(e) Nine (9) years of experience and ninety-five (95) hours of college credit,

(f) Ten (10) years of experience and eighty (80) hours of college credit;

(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or

(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 7. Law Enforcement Supervisor Certificate. To demonstrate proficiency in the Law Enforcement Supervisor Career Step, a peace officer shall:

(1) Have active peace officer certification in accordance with KRS 15.386(2);

(2) Earn a minimum of 160 additional hours of KLEC-approved or recognized in-service training as follows:

(a) Forty (40) hours of technical skills development courses,

(b) Forty (40) hours of conceptual skills development courses; and

(c) Eighty (80) hours in one (1) of the following options of courses:

1. Academy of Police Supervision; [~~or~~]

2. The forty (40) hour basic supervisor's course and forty (40) hour advanced supervisor's course; or

3. A KLEC-approved or recognized equivalent course; **and**[~~.~~] [~~and~~]

(3) Have one (1) of the following combinations of full-time supervisory law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:

(a) Two (2) years of experience and **a master's** [~~masters~~]

degree;
(b) Four (4) years of experience and **a bachelor's** [~~bachelors~~] degree,
(c) Six (6) years of experience and **an associate's** [~~associates~~] degree;
(d) Six (6) years of experience and ninety-five (95) hours of college credit;
(e) Seven (7) years of experience and eighty (80) hours of college credit;
(f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
(g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 8. Law Enforcement **Manager** [~~Management~~] Certificate. To demonstrate proficiency in the Law Enforcement **Manager** [~~Management~~] Career Step, a peace officer shall.
(1) Have active peace officer certification in accordance with KRS 15 386(2);
(2) Complete the:
(a) Department of Criminal Justice Training Criminal Justice Executive Development Course;
(b) Department of Criminal Justice Training School for Strategic Leadership;
(c) Federal Bureau of Investigation (FBI) National Academy;
(d) [~~(c)~~] University of Louisville Southern Police Institute Administrative Officers Course;
(e) [~~(d)~~] Northwestern University School of Police Staff and Command;
(f) [~~(e)~~] Police Executive Leadership College; or
(g) [~~(f)~~] Another executive leadership course recognized and approved by the KLEC as equal to one (1) of the above courses; and
(3) Have one (1) of the following combinations of full-time law enforcement management experience and credits from an accredited College or University, recognized by the Kentucky Council on Postsecondary Education:
(a) Two (2) years of experience and **a master's** [~~masters~~] degree;
(b) Four (4) years of experience and **a bachelor's** [~~bachelors~~] degree;
(c) Six (6) years of experience and **an associate's** [~~associates~~] degree;
(d) Six (6) years of experience and ninety-five (95) hours of college credit;
(e) Seven (7) years of experience and eighty (80) hours of college credit;
(f) Eight (8) years of experience and sixty-five (65) hours of college credit; or
(g) Nine (9) years of experience and fifty (50) hours of college credit.

Section 9. Law Enforcement Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement Executive Career Step, a peace officer shall:
(a) Have active peace officer certification in accordance with KRS 15.386(2);
(b) Successfully complete:
1. Orientation for new chiefs, offered by the Department of Criminal Justice Training;
2. Mandatory duties of the sheriff, offered by the Department of Criminal Justice Training;
3 Department of Criminal Justice Training School for Strategic Leadership;
4. Three (3) police executive command [~~decisions~~] courses, offered by the Department of Criminal Justice Training;
5. Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
6. [~~4.~~] An executive level course as offered by the:
a. Federal Bureau of Investigation (FBI);
b University of Louisville Southern Police Institute;
c. Northwestern University School of Police Staff and Command;
d. Institute of Police Technology and Management; or
e. Institute for Law Enforcement Administration;
(c) Successfully complete one (1) of the following.
1. 120 hours of training in conceptual or human skills development; or
2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
(d) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
1. Two (2) years of experience and **a bachelor's** [~~bachelors~~] degree;
2. Three (3) years of experience and sixty (60) hours of college credit; or
3. Four (4) years of experience and thirty (30) hours of college credit.
(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 10. Law Enforcement Chief Executive Certificate. (1) To demonstrate proficiency in the Law Enforcement **Chief** Executive Career Step, a peace officer shall:
(a) Successfully complete:
1 Orientation for new chiefs, offered by the Department of Criminal Justice Training,
2. Mandatory duties of the sheriff, offered by the Department of Criminal Justice Training;
3. Department of Criminal Justice Training School for Strategic Leadership;
4. Three (3) police executive command [~~decisions~~] courses, offered by the Department of Criminal Justice Training;
5 Three (3) Current Leadership Issues for Mid-level Executives (CLIMES) courses; or
6 [~~4.~~] An executive level course as offered by the:
a Federal Bureau of Investigation (FBI);
b. University of Louisville Southern Police Institute,
c. Northwestern University School of Police Staff and Command;
d. Institute of Police Technology and Management; or
e. Institute for Law Enforcement Administration;
(b) Successfully complete one (1) of the following:
1. 120 hours of training in conceptual or human skills development, or
2. Law Enforcement Management Career Step, plus forty (40) hours training in conceptual or human skills development; and
(c) Have one (1) of the following combinations of full-time executive law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
1. Two (2) years of experience and **a bachelor's** [~~bachelors~~] degree;
2. Three (3) years of experience and sixty (60) hours of college credit, or
3. Four (4) years of experience and thirty (30) hours of college credit.
(2) Points earned from in-service training courses shall not be used to substitute for college credit in the Law Enforcement Executive Career Step.

Section 11. Law Enforcement Officer Investigator Certificate. To demonstrate proficiency in the Law Enforcement Investigator Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.386(2);
(2) Complete 200 hours of KLEC-approved or recognized in-service training, consisting of:
(a) Eighty (80) hour criminal investigations I [~~basic investigator's~~] course; and
(b) 120 training hours in investigative courses identified by the KLEC; and
(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary

Education:
(a) Four (4) years of experience and **a master's** [~~masters~~] degree;
(b) Six (6) years of experience and **a bachelor's** [~~bachelors~~] degree;
(c) Nine (9) years of experience and **an associate's** [~~associates~~] degree;
(d) Eight (8) years of experience and 110 hours of college credit;
(e) Nine (9) years of experience and ninety-five (95) hours of college credit;
(f) Ten (10) years of experience and eighty (80) hours of college credit;
(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 12. Law Enforcement Traffic Officer Certificate. To demonstrate proficiency in the Law Enforcement Traffic Career Step, a peace officer shall:
(1) Have active peace officer certification in accordance with KRS 15.386(2);
(2) Complete 200 hours of in-service training, consisting of:
(a) Eighty (80) hour basic accident investigation course or a KLEC-approved equivalent; and
(b) 120 training hours in traffic courses identified by the KLEC; and
(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Four (4) years of experience and **a master's** [~~masters~~] degree;
(b) Six (6) years of experience and **a bachelor's** [~~bachelors~~] degree,
(c) Nine (9) years of experience and **an associate's** [~~associates~~] degree,
(d) Eight (8) years of experience and 110 hours of college credit,
(e) Nine (9) years of experience and ninety-five (95) hours of college credit;
(f) Ten (10) years of experience and eighty (80) hours of college credit;
(g) Eleven (11) years of experience and sixty-five (65) hours of college credit; or
(h) Twelve (12) years of experience and fifty (50) hours of college credit.

Section 13. Advanced Deputy Sheriff Certificate. To demonstrate proficiency in the Advanced Deputy Sheriff Career Step, a peace officer shall.
(1) Have active peace officer certification in accordance with KRS 15.386(2),
(2) Earn 160 additional hours of KLEC-approved or recognized in-service training, of which.
(a) Eighty (80) hours shall be in topics specific to sheriffs' responsibilities;
(b) Forty (40) hours shall be in technical skills development; and
(c) Forty (40) hours shall be in human skills development; and
(3) Have one (1) of the following combinations of full-time law enforcement experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Two (2) years of experience and **a bachelor's** [~~bachelors~~] degree;
(b) Four (4) years of experience and **an associate's** [~~associates~~] degree;
(c) Four (4) years of experience and ninety-five (95) hours of college credit;
(d) Five (5) years of experience and eighty (80) hours of college credit;
(e) Six (6) years of experience and sixty-five (65) hours of college credit;
(f) Seven (7) years of experience and fifty (50) hours of college credit; or
(g) Eight (8) years of experience and thirty-five (35) hours of college credit.

Section 14. Basic Telecommunicator Certificate. To demonstrate proficiency in the Basic Telecommunications Career Step, a person shall successfully complete the following courses:
(1) Twenty-four (24) hours of emergency medical dispatch;
(2) Forty (40) hours of basic telecommunications;
(3) Eight (8) hours of **Crisis Negotiation** [~~critical incident~~]; [~~and~~]
(4) Eight (8) hours of family violence;
(5) Spanish for the Telecommunicator; and
(6) Incident command.

Section 15. Intermediate Telecommunicator Certificate. To demonstrate proficiency in the Intermediate Telecommunications Career Step, a person shall:
(1) Complete the Basic Telecommunications Career Step;
(2) Complete the following courses:
(a) Eight (8) hours of customer service,
(b) Eight (8) hours of developing high performance teams;
(c) Sixteen (16) hours of cultural awareness [~~diversity~~]; and
(d) Sixteen (16) hours of advanced emergency medical dispatch; and
(3) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Three (3) years of experience and thirty (30) hours of college credit;
(b) Four (4) years of experience and twenty-five (25) hours of college credit;
(c) Five (5) years of experience and twenty (20) hours of college credit,
(d) Six (6) years of experience and fifteen (15) hours of college credit;
(e) Seven (7) years of experience and ten (10) hours of college credit; or
(f) Eight (8) hours of experience and five (5) hours of college credit.

Section 16. Advanced Telecommunicator Certificate. To demonstrate proficiency in the Advanced Telecommunications Career Step, a person shall:
(1) Complete the Intermediate Telecommunications Career Step;
(2) Complete the following courses:
(a) Forty (40) hours of communications training officer; and
(b) An eight (8) hours KLEC-approved telecommunications ethics course;
(3) Complete eight (8) hours of elective courses from any telecommunications course approved by the KLEC, and
(4) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education.
(a) Four (4) years of experience and forty-five (45) hours of college credit;
(c) Five (5) years of experience and forty (40) hours of college credit;
(d) Six (6) years of experience and thirty-five (35) hours of college credit;
(e) Seven (7) years of experience and thirty (30) hours of college credit;
(f) Eight (8) years of experience and twenty-five (25) hours of college credit; or
(g) Nine (9) years of experience and twenty (20) hours of college credit.

Section 17. Telecommunications Supervisor Certificate. To demonstrate proficiency in the Telecommunications Supervisor

Career Step, a person shall:
(1) Complete the Basic Telecommunications Career Step;
(2) Successfully complete:
(a) The forty (40) hour first line supervision course; and
(b) Sixteen (16) hours of supervision training approved by the KLEC; and
(3) Have one (1) of the following combinations of full-time telecommunications experience and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Two (2) years of experience and an **associate's** [~~associates~~] degree,
(b) Three (3) years of experience and fifty-five hours of college credit;
(c) Four (4) years of experience and fifty (50) hours of college credit,
(d) Five (5) years of experience and forty-five (45) hours of college credit;
(e) Six (6) years of experience and forty (40) hours of college credit;
(f) Seven (7) years of experience and thirty-five (35) hours of college credit, or
(g) Eight (8) years of experience and thirty (30) hours of college credit.

Section 18. Telecommunications Director/Manager Certificate. To demonstrate proficiency in the Telecommunications Director/Manager Career Step, a person shall:
(1) Obtain the Telecommunications Supervisor Certificate;
(2) Successfully complete:
(a) The forty (40) hour telecommunications manager course; and
(b) Forty (40) hours of elective supervisory or management courses approved by the KLEC; and
(3) Have one (1) of the following combinations of full-time telecommunications experience in a management position and credits from an accredited college or university, recognized by the Kentucky Council on Postsecondary Education:
(a) Two (2) years of experience and a bachelors degree;
(b) Four (4) years of experience and an **associate's** [~~associates~~] degree;
(c) Five (5) years of experience and sixty (60) hours of college credit;
(d) Six (6) years of experience and fifty-five (55) hours of college credit;
(e) Seven (7) years of experience and fifty (50) hours of college credit;
(f) Eight (8) years of experience and forty-five (45) hours of college credit;
(g) Nine (9) years of experience and forty (40) hours of college credit; or
(h) Ten (10) years of experience and thirty-five (35) hours of college credit.

Section 19. Certificate of Completion. The KLEC shall issue a certificate to a peace officer or telecommunicator upon completion of a career development step.

Section 20. Maintenance of Records. All training records shall be maintained in accordance with applicable provisions of KRS Chapter 171.

Section 21. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "Career Development Program Participant Commitment Form," KLEC Form CDP-1, (August 2006 [~~9/03~~] edition);
(b) "[~~Application for~~]Intermediate Law Enforcement Officer[~~Certificate~~]", KLEC Form CDP-2, (August 2006 [~~9/03~~] edition);
(c) "[~~Application for~~]Advanced Law Enforcement Officer[~~Certificate~~]", KLEC Form CDP-3, (August 2006 [~~9/03~~] edition);
(d) "[~~Application for~~]Law Enforcement Officer Investigator[~~Certificate~~]", KLEC Form CDP-4, (August 2006 [~~9/03~~] edition);
(e) "[~~Application for~~]Law Enforcement Traffic Officer[~~Certificate~~]", KLEC Form CDP-5, (August 2006 [~~9/03~~] edition);
(f) "[~~Application for~~]Advanced Deputy Sheriff[~~Certificate~~]", KLEC Form CDP-6, (August 2006 [~~9/03~~] edition);
(g) "[~~Application for~~]Law Enforcement Supervisor[~~Certificate~~]", KLEC Form CDP-7, (August 2006 [~~9/03~~] edition);
(h) "[~~Application for~~]Law Enforcement Manager[~~Management~~] [~~Certificate~~]", KLEC Form CDP-8, (August 2006 [~~9/03~~] edition);
(i) "[~~Application for~~]Law Enforcement Executive[~~Certificate~~]", KLEC Form CDP-9, (August 2006 [~~9/03~~] edition);
(j) "[~~Application for~~]Basic Telecommunicator[~~Certificate~~]", KLEC Form CDP-10, (**August 2006** [~~9/03~~] edition);
(k) "[~~Application for~~]Intermediate Telecommunicator[~~Certificate~~]", KLEC Form CDP-11, (**August 2006** [~~9/03~~] edition);
(l) "[~~Application for~~]Advanced Telecommunicator[~~Certificate~~]", KLEC Form CDP-12, (**August 2006** 9/03 edition);
(m) "[~~Application for~~]Telecommunications Supervisor[~~Certificate~~]", KLEC Form CDP-13, (**August 2006** [~~9/03~~] edition);
(n) "[~~Application for~~]Telecommunications Director/Manager[~~Certificate~~]", KLEC Form CDP-14, (**August 2006** [~~9/03~~] edition), and
(o) "Law Enforcement Chief Executive[~~Certificate~~]", KLEC Form CDP-15, (**August 2006** [~~9/03~~] edition).
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Criminal Justice Training, Funderburk Building, Eastern Kentucky University, 521 Lancaster Road, Richmond, Kentucky 40475-3102, Monday through Friday, 8 a.m. to 4 30 p.m.

LARRY BALL, Executive Director
For WILLIAM F. WALSH, Ph D., Chair
APPROVED BY AGENCY: May 15, 2007
FILED WITH LRC: May 15, 2007 at noon
CONTACT PERSON: Stephen D. Lynn, Assistant General Counsel, Department of Criminal Justice Training, Funderburk Building, 521 Lancaster Avenue, Richmond, Kentucky 40475-3102, phone (859) 622-3073, fax (859) 622-5027.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(As Amended at ARRS, July 9, 2007)

805 KAR 11:001. Definitions for 805 KAR Chapter 11.

RELATES TO: KRS **217.900(1), 218A.010(6), Chapter 342, 351.010, 351.182(8)** [~~351.186~~]
STATUTORY AUTHORITY: KRS 351.070[~~, KRS~~] 351.186
NECESSITY, FUNCTION AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.186 authorizes the Office of Mine Safety and Licensing to certify drug-free workplace programs implemented by an employer who is also a licensee, for **the** licensee to be eligible to obtain a credit on **the licensee's** [~~its~~] premium for workers' compensation insurance. This administrative regulation defines terms used in 805 KAR Chapter 11.

Section 1. Definitions. (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, **produced from any source or process** [~~from whatever source or by whatever process it is produced~~]
(2) "Consortium" means **an entity, which may involve varied pools of employers and their employees,** [~~any entity~~] established to provide cost-effective services to employers to help the employers **comply with** [~~meet~~] drug-free workplace program requirements **and may provide** [~~and which may involve varied pools of employers and their employees wherein~~] employer education, supervisor training, and drug and alcohol testing [~~may be offered~~] at a reduced cost to the employers who choose to participate.
(3) "Drug" means a controlled substance as defined in KRS 218A.010(6) and **as established** in 902 KAR Chapter 55, includ-

ing:
(a) Substances listed in KRS 351.182(8);
(b) Illicit substances; and
(c) [those substances listed in KRS 351.182 (8), illicit substances, and] Volatile substances as defined in KRS 217.900(1).

(4) "Drug or alcohol rehabilitation program" means a service provider that provides confidential, timely, and expert identification, assessment, treatment, and resolution of employee drug or alcohol abuse.[;]

(5) "Drug test" or "test" means a [any] chemical, biological, or physical instrumental analysis administered by a qualified laboratory, for the purpose of determining the presence or absence of a drug or its metabolites or alcohol pursuant to standards, procedures, and protocols established [set forth] by the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) for the collection and testing required by KRS 351.182.

(6) "Employee" means any person who works for a salary, wages, or other remuneration for an employer, licensee, or operator [or independent contractor].

(7) "Employee Assistance Program" means an established program providing:
(a) Professional assessment of employee personal concerns;
(b) Confidential and timely services to identify [identification services with regard to] employee alcohol or substance abuse;
(c) Referrals of employees for appropriate diagnosis, treatment, and assistance with [regard to employee] alcohol or substance abuse; and
(d) Follow-up services for employees who participate in a drug or alcohol rehabilitation program and are recommended for monitoring after returning to work. [Services provided under] [If, in addition to the above activities,] [an employee assistance program] [provides diagnostic and treatment services, these services] [shall in all cases be provided] [by the program,] [regardless of race, color, religion, national origin, disability, sex, or age.]

(8) "Employer" means a [any] corporation, partnership, sole proprietorship, or other business entity doing business in Kentucky which is:
(a) [mandatorily subject to and] Required to comply with the provisions of KRS Chapter 342 or voluntarily covers excluded employees pursuant to KRS 342.660; and
(b) A licensee[, and is also a licensee as defined by KRS 351.010 (e)].

(9) "Executive director" is defined by KRS 351.010(1)(ae) [351.010(ae)].

(10) "Illicit substances" is defined by KRS 351.010(1)(m).

(11) "Independent contractor" means a [any] person, business firm, partnership, or corporation with whom an owner, licensee, or operator may negotiate an agreement providing for construction, equipment, maintenance, personnel, management, and operation of a coal mine.

[(11) "Illicit substance" is defined by KRS 351.010(m).]

(12) "Licensee" is defined by KRS 351.010(1)(o) [351.010(o)].

(13) "Medical review officer" or "MRO" is defined by KRS 351.010(1)(p) [351.010(p)].

(14) "Office" is defined by KRS 351.010(1)(ad) [351.010(ad)].

(15) "Operator" is defined by KRS 351.010(1)(u) [351.010(u)].

(16) "Qualified laboratory" means a laboratory certified in accordance with the National Laboratory Certification Program (NLCP) by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA).

(17) "Reasonable suspicion [drug] testing" means drug or alcohol testing that meets the requirements in 805 KAR 11:020, Section 2(2). [based on a belief that an employee is using or has used drugs or alcohol in violation of the employer's policy, drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, training, or education. Among other things, such facts and inferences may be based upon:
(a) Observable phenomena while at work such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;
(b) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
(c) A report of drug or alcohol use provided by a reliable and credible source;
(d) Evidence that an individual has tampered with a drug or alcohol test during employment with the current covered employer;
(e) Information that an employee has caused, contributed to or been involved in an accident while at work; or
(f) Evidence that an employee has used, possessed, sold, solicited, or transferred illegal or illicit drugs or used alcohol while on the covered employer's premises or while operating the covered employer's vehicle, machinery, or equipment.]

(18) "Serious physical injury" is defined by KRS 351.010(1)(y) [351.010(y)].

(19) "Supervisory personnel" is defined by KRS 351.010(1)(ac) [351.010(ac)].

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: April 10, 2007
FILED WITH LRC April 11, 2007 at 9 a.m.
CONTACT PERSON. Holly McCoy, Executive Staff Advisor, Office of Technical and Administrative Support, Department for Natural Resources, P.O. Box 2244, Frankfort, Kentucky 40602-2244, phone (502) 573-0140, fax (502) 573-0152

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(As Amended at ARRS, July 9, 2007)

805 KAR 11:010. Requirements for application for certification of drug-free workplace.

RELATES TO: KRS 351.186
STATUTORY AUTHORITY: KRS 351.070(13), 351.186 [351.070, KRS 351.186]
NECESSITY, FUNCTION AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.186 authorizes the Office of Mine Safety and Licensing to certify drug-free workplace programs implemented by an employer who is also a licensee, for the employer licensee to be eligible to obtain a credit on the licensee's [its] premium for workers' compensation insurance. This administrative regulation establishes the requirements for applications submitted to the Office of Mine Safety and Licensing for certification of a drug-free workplace program.

Section 1. Applicability. (1) This administrative regulation shall apply to an application [This regulation shall apply to all applications] for certification of a drug-free workplace program implemented by an employer who is also a licensee.
(2) Employer participation in the Drug-Free Workplace Program shall be voluntary.
(3) All drug or alcohol testing shall be conducted:
(a) In accordance with applicable federal and state requirements; and
(b) As required by this administrative regulation for participants in the Drug-Free Workplace Program.

Section 2. Application Requirements. Employers [who are also licensees and] who desire a drug-free workplace certification pursuant to KRS 351.186 shall submit to the office a notarized initial and annual [with the initial and annual application for license to operate a coal mine] [an initial] application[, and annually thereafter,] in the form of an affidavit executed by the owner or chief executive officer of the licensee establishing [setting forth] that it provides a drug-free workplace by:
(1) Providing a copy of a statement to each employee at the mine and posting the statement in a prominent place at the mine. The statement shall [which]:
(a) Notify [notifies] employees that the unlawful manufacture,

distribution, dispensation, possession, or use of alcohol or a controlled or illicit substance is prohibited in the mine; and

(b) Specify [specifies] the actions that will be taken against employees for violations of the [such] prohibition;[.]

(2) Establishing an alcohol and substance abuse education and awareness training program which complies with [meets] the minimum requirements of 805 KAR 11.020, Section 2(1), to inform employees and supervisory personnel about:

(a) The dangers of drug abuse in the workplace;

(b)[,] The role of co-workers and supervisors in addressing alcohol or drug abuse;

(c)[,] The licensee's policy of maintaining a drug-free workplace;

(d)[, any] Available drug counseling, rehabilitation, and employee assistance programs; and

(e)[, and] The penalties [that may be imposed upon employees] for violations of the drug-free workplace policy;[.]

(3) Establishing a program that includes [breath] alcohol and [urine] drug testing performed as established in [accordance with the provisions of] 805 KAR 11:020, Section 2(2) through (6); [(5)][.]

(4) Providing an Employee Assistance Program which shall:

(a) Include:

1. Professional [includes professional] [capable of providing expert] assessment of employee personal concerns;

2. Confidential and timely services to identify [identification services with regard to] employee drug or alcohol abuse;

3. Referrals of employees for appropriate diagnosis, treatment, and assistance with regard to employee alcohol or substance abuse; and

4. Follow-up services for employees who participate in a drug or alcohol rehabilitation program and are recommended for monitoring after returning to work; and

(b) Provide services regardless of race, color, religion, national origin, disability, sex, or age[.]

(5) Verifying that the frequency and duration of each employee and supervisor training session meets the requirements of 805 KAR 11:020, Section 2(1)(b) and (c);[.]

(6) Verifying that all employees have participated, or will participate during the calendar year, in the required alcohol and substance abuse education and awareness training sessions;

(7) Maintaining a drug-free workplace throughout its workers' compensation insurance policy period; and[.]

(8) Maintaining the drug-free workplace program in compliance with all applicable federal and state laws and regulations.

(9) Requiring that all independent contractors who are required to be certified pursuant to KRS 351.102 shall comply with the provisions of the licensee's Drug-Free Workplace Program.

[(9) Certifying to the office that it shall hold the Commonwealth of Kentucky, the Department for Natural Resources, and the Office harmless for responsibility or liability under the drug-free workplace program.]

Section 3. Documents to be Attached. The application [affidavit] shall be accompanied by copies of the following documents:

(1) The licensee's written drug-free workplace policy;

(2) A statement identifying each alcohol and drug test that will be conducted;

(3) A statement describing the licensee's[, and if applicable, independent contractor's] Employee Assistance Program;

(4) A description of the alcohol and substance abuse education and awareness training program for employees and supervisory personnel; and

(5) A statement describing the confidentiality of the licensee's drug-free workplace program.

Section 4. Application Completeness. (1) The office shall reject an [The office may reject any] application for certification of a drug-free workplace program which fails to comply with [meet] any of the criteria listed in Section 2 or 3 of this administrative regulation.

(2)(a) The office shall notify the licensee of rejection of the application in writing, stating the specific reasons for the rejection.

(b) The notification shall be mailed certified mail, return receipt requested, to the address listed on the licensee's most recent mine license or mine license application.

(c) Service by certified mail shall be complete:

1. [is complete] Upon delivery of the notification;

2.[,] Upon acceptance by any person eighteen (18) years or older at the licensee address;

3.[,] Upon refusal to accept by a [any] person at the licensee address;

4.[,] Upon the U.S. Postal Service's inability to deliver the notification if properly addressed; or

5.[, or] Upon failure of the applicant to claim the notification prior to its return to the office by the U.S. Postal Service.

(d) The return receipt or envelope shall be proof of acceptance, refusal, inability to deliver, or failure to claim the envelope.

(3) The licensee may appeal [contest] the rejection as established [set forth] in 825 KAR 1:020, Section 4.

Section 5. [General provisions. (1) Nothing contained in this chapter shall affect any laws, administrative regulations, ordinances, resolutions, or local regulations against driving under the influence of alcohol or other drugs, or other similar offenses that involve the operation of motor vehicles, machinery, or other hazardous equipment.

(2) Nothing in this chapter is intended to authorize any employer or licensee to test any applicant or employee for alcohol or drugs in any manner inconsistent with federal or state constitutional or statutory requirements.

(3) Nothing in this chapter shall be construed to require an employer or licensee to test, or create a legal obligation upon an employer to request an employee or job applicant to undergo drug or alcohol testing, except as part of a drug-free workplace program certified in accordance with this chapter.]

Section 6.] Incorporation by Reference. (1) "Mine License Applicant's Affidavit: Drug-Free Workplace Program", 2007 [2006] edition, [issued by the Office of Mine Safety and Licensing] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
Approved by agency: April 10, 2007
Filed with LRC: April 11, 2007 at 9 a.m.
CONTACT PERSON: Holly McCoy, Executive Staff Advisor, Office of Technical and Administrative Support, Department for Natural Resources, P.O. Box 2244, Frankfort, Kentucky 40602-2244, phone (502) 573-0140, fax (502) 573-0152.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department for Natural Resources
Office of Mine Safety and Licensing
(As Amended at ARRS, July 9, 2007)

805 KAR 11:020. Requirements for certification of drug-free workplace.

RELATES TO: KRS 351.102, 351.1291, 351.182(7), (8), 351.185(1)(a)-(e), 351.186

STATUTORY AUTHORITY: KRS 351.070(13), 351.186 [351.070, KRS 351.186]

NECESSITY, FUNCTION AND CONFORMITY: KRS 351.070(13) authorizes the Secretary of the Environmental and Public Protection Cabinet to promulgate administrative regulations necessary and suitable for the proper administration of KRS Chapter 351. KRS 351.186 authorizes the Office of Mine Safety and Licensing to certify drug-free workplace programs implemented by an employer who is also a licensee, for the employer and licensee to be eligible to obtain a credit on the licensee's premium for workers' compensation insurance. This administrative regulation establishes the minimum requirements for certification of a drug-free

workplace program.

Section 1. Review of Applications for Certification of a Drug-free Workplace Program. (1) The office shall review the application for certification of a drug-free workplace program and make a written decision concerning approval or denial of the application.

(2)(a) If the application has been denied, the notification of the decision shall include specific reasons for the denial.

(b) The notification of the decision to approve or deny the application shall be mailed to the licensee or [license] applicant by certified mail, return receipt requested, to the address listed on the licensee's most recent mine license or mine license application.

(c) Service by certified mail shall be complete:

1. [Service by certified mail is complete] Upon delivery of the envelope;

2.[,] Upon acceptance by any person eighteen (18) years or older at the licensee or application address;

3.[,] Upon refusal to accept by a [any] person at the licensee address;

4.[,] Upon the U.S. Postal Service's inability to deliver the notification [assessment] if properly addressed; or

5.[, or] Upon failure of the licensee or applicant to claim the envelope prior to its return to the office by the U.S. Postal Service.

(d) The return receipt or envelope shall be proof of acceptance, refusal, inability to deliver, or failure to claim the envelope.

(3) The licensee may appeal the rejection as established [contest the rejection as set forth] in 825 KAR 1:020, Section 4.

Section 2. Approval and Certification of Drug-Free Workplace Program. The office may approve an application for, and issue a certification of, a drug-free workplace program to an employer [who is also a licensee], if the drug-free workplace program complies with all of [meets all] the following minimum requirements:

(1) The program includes alcohol and substance abuse education and awareness training for employees and supervisors which:

(a) Provides to all employees written materials explaining the licensee's policies and procedures with respect to the drug-free workplace program;[,]

(b) Provides each employee at least one (1) hour of initial, and at least thirty (30) minutes refresher each year thereafter, of alcohol and substance abuse education and awareness training. The training shall [which may] include, at a minimum,[-] information concerning:

a. Alcohol and drug testing;

b. The effects of alcohol and drug use on an individual's health, work, and personal life;

c. The disease of alcohol or drug addiction;

d. Signs and symptoms of an alcohol or drug problem;

e. The role of co-workers and supervisors in addressing alcohol or substance abuse; and

f. Referrals to an employee assistance program.

2. The alcohol and substance abuse awareness and education training provided by the office pursuant to KRS 351.102, 351.106, and 351.1291 as part of certification or refresher training shall [may] satisfy this requirement if the licensee provides verification of all employees' attendance at the training program. "The Mine Safety and Health Administration Form 5000-23" required by 805 KAR 7:030 shall serve as this verification; and

(c) Provides all supervisory personnel, in addition to the training specified in paragraph (b) of this subsection [2 above], with thirty (30) minutes each year of alcohol and substance abuse education and awareness training.

1. The training shall include, at a minimum, information on:

a. [which includes, at a minimum:] Recognizing the signs of alcohol and substance abuse in the workplace;

b. How to document signs of employee alcohol or substance abuse;

c. How to refer employees to an employee assistance program or other alcohol and substance abuse treatment; and

d. Legal and practical aspects of reasonable suspicion testing for the presence of drugs and alcohol. The alcohol and substance abuse education and awareness training provided by the office pursuant to KRS 351.106(3) and 351.1291(4) as part of certification or refresher training may satisfy this requirement if the licensee provides verification of attendance of all supervisory personnel at the training program. "The Mine Safety and Health Administration Form 5000-23" required by 805 KAR 7:030 shall serve as this verification;

(2) "Reasonable suspicion testing shall be based on a belief that an employee is using or has used drugs or alcohol in violation of the employer's policy, drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience, training, or education. The reasonable suspicion testing shall be based upon:

(a) While at work, direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol;

(b) While at work, abnormal conduct, erratic behavior, or a significant deterioration in work performance;

(c) A report of drug or alcohol use provided by a reliable and credible source;

(d) Evidence that an individual has tampered with a drug or alcohol test during employment with the current covered employer;

(e) Information that an employee has caused, contributed to, or been involved in an accident while at work; or

(f) Evidence that an employee has used, possessed, sold, solicited, or transferred illegal or illicit drugs or used alcohol while on the covered employer's premises or while operating the covered employer's vehicle, machinery, or equipment.

(3) The program includes breath alcohol and urine drug testing to which job applicants or employees shall be [are] required to submit at the following times:

(a) For urine drug testing:

1. After conditional offer of employment;

2. After being selected using a statistically valid, unannounced random method,

3. Upon reasonable suspicion of prohibited drug use [Reasonable suspicion drug testing],

4. At Follow-up testing at least once per quarter for one (1) year after the employee's successful completion of an employee assistance program for drug[or alcohol]-related problems, or a drug [or alcohol] rehabilitation program, or as recommended by the person administering the drug [or alcohol] rehabilitation program; and

5. Following a [any] mine accident on the licensed premises which requires off-site medical attention be given to a person.

(b) For breath alcohol testing:

1. After conditional offer of employment;

2. Upon reasonable suspicion of prohibited alcohol use [Reasonable suspicion alcohol] [drug] [testing], [and]

3. Following a [any] mine accident on the licensed premises which requires off-site medical attention be given to a person; and

4. Follow-up testing at least once per quarter for one (1) year after the employee's successful completion of an employee assistance program for alcohol-related problems, or an [a] alcohol rehabilitation program, or as recommended by the person administering the alcohol rehabilitation program;

(4) The office[.

(c) The office] may issue a certification for a program that provides for alcohol and drug testing of other fluids or products of the human body capable of revealing the presence of drugs or alcohol if [providing that] the testing is as accurate as, and equivalent to, breath alcohol and urine drug testing and complies with [all other requirements of] this section of this administrative regulation;

(5)[.

(3)] The program includes the minimum testing protocol as established [set forth] in KRS 351.182(7) and (8);

(6)[.

(4)] The program provides that the collection of samples and administration of drug and alcohol tests shall follow all standards, procedures and protocols established [set forth] by the U.S. Department [Dept.] of Health and Human Services' Substance Abuse and Mental Health Administration (SAMHSA);

(7)[-

(5)] The program provides that the test results have been performed by a qualified laboratory;

~~(8)~~[-

~~(6)~~] The program includes medical review of test results as follows:

(a)1. All test results **shall be** [are] submitted for medical review by the medical review officer ([~~"~~]MRO[~~"~~]), who shall consider the medical history of the employee or applicant, as well as other relevant biomedical information.

2. If there is a positive test result, the employee or applicant shall be given an opportunity to report to the MRO the use of any prescription or over-the-counter medication.

(b) If the MRO determines that there is a legitimate medical explanation for a positive test result, the MRO may certify that the test results do not **indicate** [~~meet the conditions for a determination of~~] the unlawful use of alcohol or a controlled substance. If the MRO determines, after appropriate review, that there is not a [no legitimate] medical explanation for the positive test result other than the unauthorized use of alcohol or a prohibited drug, the MRO shall refer the individual tested to an employee assistance program[,] or to a personnel or administrative officer for further proceedings in accordance with the licensee's drug-free workplace program.

(c) Determinations concerning the use of alcohol or a controlled or illicit substance shall comply with all procedures outlined in the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA) "Medical Review Officer Manual **for Federal Agency Workplace Drug Testing Programs**";

~~(9)~~[-

~~(7)~~] The program includes an employee assistance program (EAP) for its employees and supervisory personnel.

(a) The licensee may establish the EAP as a part of its internal personnel services or may contract with an entity that provides EAP services.

(b) Employer licensees' participation in a consortium **shall** [~~may~~] satisfy this requirement; **and**

~~(10)~~[-

~~(8)~~] The program includes controlled-access maintenance at the coal mine of records including[:] the names and position titles of all employees and supervisory personnel trained under the program, and the names of all persons who presented alcohol and substance abuse training, for review by the office.

(11) The program includes a requirement that all independent contractors required to be certified pursuant to KRS 351.102 comply with the provisions of the licensee's Drug-Free Workplace Program.

Section 3. Revocation of Certification. **(1)** The office shall revoke a certification issued pursuant to Section 2 of this administrative regulation **if the licensee discontinues or fails** [~~should the licensee discontinue or fail~~] to maintain its drug-free workplace program in compliance with the requirements of **805 KAR Chapter 11.**

(2)(a) [~~this chapter.~~] The notification of revocation shall include specific reasons for the revocation and shall be mailed to the licensee by certified mail, return receipt requested, to the address listed on the licensee's most recent mine license.

(b) Service by certified mail **shall be complete:**

1. [~~is complete~~] Upon delivery of the envelope;

2.[,] Upon acceptance by **a** [~~any~~] person eighteen **(18)** years or older at the licensee or application address;

3.[,] Upon refusal to accept by **a** [~~any~~] person at the licensee address;

4.[,] Upon the U.S. Postal Service's inability to deliver the **notification** [~~assessment~~] if properly addressed; **or**

5.[, ~~or~~] Upon failure to claim the envelope prior to its return to the office by the U.S. Postal Service.

(c) The return receipt **or envelope** shall be proof of acceptance, refusal, inability to deliver, or failure to claim the envelope. [~~The licensee may contest the rejection as set forth in 825 KAR 1.020, Section 4.~~]

Section 4. Confidentiality of Records. Records of drug or alcohol test results, written or otherwise, received by the licensee **shall be** [~~are~~] confidential communications and shall not be disclosed by the licensee to any party other than the office, except under the circumstances listed in KRS 351.185(1)(a) through (e).

Section 5. Denial or Revocation of Certification. **A** [~~Any~~] licensee whose application for certification has been denied or revoked may file a petition of appeal in accordance with the provisions of 825 KAR 1.020, Section 4.

Section 6. Incorporation by Reference. (1) The "Medical Review Officer Manual **for Federal Agency Workplace Drug Testing Programs**" issued by the Department of Health and Human Services, November 1, 2004 Edition (DHHS Publication No. (ADMINISTRATIVE REGULATION) 88-1526)[~~DHHS Publication No. (ADM) 88-1526~~] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Mine Safety and Licensing, 1025 Capital Center Drive, Frankfort, Kentucky 40601, **Monday through Friday** 8:00 a.m. to 4:30 p.m.

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
Approved by agency: April 10, 2007
Filed with LRC: April 11, 2007 at 9 a.m.
CONTACT PERSON: Holly McCoy, Executive Staff Advisor, Office of Technical and Administrative Support, Department for Natural Resources, P.O. Box 2244, Frankfort, Kentucky 40602-2244, phone (502) 573-0140, fax (502) 573-0152.

ENVIRONMENTAL AND PUBLIC PROTECTION
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, July 9, 2007)

820 KAR 1:001. Definitions for 820 KAR Chapter 1.

RELATES TO: KRS 238.500-238.995
STATUTORY AUTHORITY: KRS 238.515(9)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the Office of Charitable Gaming to promulgate administrative regulations to carry out the provisions of the chapter. This administrative regulation establishes definitions of terms used throughout 820 KAR Chapter 1.

Section 1. Definitions. (1) "Account number" means the unique identification number, if any, assigned by a card-minding device system to a customer that uses a card-minding device to play bingo.

(2) "Bet block" means an area that indicates the dollar amount of the wager.

(3) "Bingo ball" means a ball imprinted with numbers and letters which is used in the selection process of a bingo game.

(4) "Bingo machine" means a type of selection device with a receptacle for the unselected bingo balls, a blower for selecting the balls, and a ball tray that contains seventy-five (75) holes in which to place the ball once it is called.

(5) "Bingo paper pack" means a group of bingo paper sheets that are manufactured, collated, and sold by the manufacturer as a unit.

(6) "Bingo paper package" means a group of bingo paper sheets or packs that are assembled together by an organization for sale at a gaming occasion that becomes a unique item for sale with a specific price

(7) "Bingo paper sheet" means a single piece of paper on which one (1) or multiple bingo faces are printed.

(8) "Break open bingo" means a bingo game in which the numbers on the face are hidden until after purchase.

(9) "Bundle" means to price a certain amount of bingo paper faces for a certain price with the patron choosing the type of packs that make up the total faces.

(10) "Called" means that a number located on a bingo ball has been:

(a) Selected by the selection device;

(b) Verbally announced by the caller;

(c) Displayed on the flashboard or other display device; and
(d) Placed in a ball tray or other device.
(11) "Cash" means currency, coinage, or a negotiable instrument.
(12) [~~"Cash short" means the total amount of money actually received from the sale of gaming supplies at a gaming occasion is less than the amount of money due from the sale of that quantity of gaming supplies.~~
~~(13)~~] "Cash over" means the total amount of money actually received from the sale of gaming supplies at a gaming occasion is more than the amount of money due from the sale of that quantity of gaming supplies.
(13) "Cash short" means the total amount of money actually received from the sale of gaming supplies at a gaming occasion is less than the amount of money due from the sale of that quantity of gaming supplies.
(14) "Chief executive officer" means the director of the organization or the person who has legal authority to direct the management of the organization, distributor, manufacturer, or facility.
(15) "Chief financial officer" means the person who shall be:
(a) Responsible for overseeing the financial activities of the organization, distributor, manufacturer, or facility;
(b) The custodian of the gaming occasion records; and
(c) Responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the office.
(16) "Conditioning" means a restatement of:
(a) How many numbers or combinations of numbers are being selected by the players;
(b) The way in which the numbers are being wagered; and
(c) The corresponding dollar amount wagered.
(17) "Continuation game" means a multipart bingo game in which more than one (1) game with more than one (1) pattern may be played on one (1) bingo paper sheet.
(18) "Covered" means daubed or smeared with indelible ink if using a disposable paper bingo face, or marked electronically if using a card-minding device.
(19) "Cumulative pulltab game" means a pulltab game consisting of multiple pulltab deals that is designed by the manufacturer so that a portion of each deal's predetermined payout is designated to a prize pool board.
(20) "Deal" means each separate game or series of pulltabs which has the same serial number and which may be composed of multiple packages.
(21) "Digital signature" means a method by which data, as in a software application, is expressed in a calculated number which is used to verify the accuracy of the data or a copy of the data.
(22) "Disposable paper bingo face" means a nonreusable bingo face assembled in a single sheet, multiple face sheet, pad, or pack form.
(23) "Draw ticket" means a blank ticket upon which the numbers are marked as they are randomly selected.
(24) "EPROM" means Erasable Programmable ROM.
(25) "Event game" means a type of pulltab game, with or without a seal card, that is designed by the manufacturer so that certain prizes are determined by:
(a) The draw of a bingo ball; or
(b) A method of randomly selecting numbers or symbols that correspond to the numbers or symbols printed on a ticket.
(26) "Exception log" means a record documenting a prize payout that has not been authorized by the computer.
(27) "Face" means a paper or an electronic representation containing:
(a) Five (5) rows of five (5) squares with numbers or symbols;
(b) A free center space;
(c) The letters "B", "I", "N", "G", "O" printed in order over the five (5) columns; and
(d) A unique perm number identifying each face.
(28) "Fixed base card-minding device" means a computer system, not necessarily manufactured by a licensed manufacturer, which has been loaded with propretary software by a licensed manufacturer to enable it to function as a card-minding device.
(29) "Flare" means the paper included with a deal of pulltabs that identifies the game and payout structure.
(30) "Flashboard" or "display board" means a board that displays the bingo numbers called.
(31) "Form number" means a manufacturer's alphanumeric number that identifies a pulltab payout structure.
(32) "Gambling" means staking or risking something of value on the outcome of a contest, game, gaming scheme, or gaming device which:
(a) Is based upon an element of chance, in accord with an agreement or understanding that someone will receive something of value if there is a certain outcome; and
(b) Does not include a contest or game in which eligibility to participate is determined by chance and the ultimate winner is determined by skill.
(33) "Gaming occasion" means an event at which charitable gaming takes place, such as a bingo session, a charity fundraising event, a special limited charity fundraising event, a sale of pulltabs, or a sale of raffle tickets.
(34) "Gaming occasion program", "bingo program", "occasion program", or "program" means a written list of all games to be played and prize amounts to be paid for each game during a gaming occasion, including, if the prizes are based on attendance, the amount of the prize and the attendance required.
[~~(34) "Gaming occasion" means an event at which charitable gaming takes place, such as a bingo session, a charity fundraising event, a special limited charity fundraising event, a sale of pulltabs, or a sale of raffle tickets.~~]
(35) "Hand-held card-minding device" means a hand-held computer that is either manufactured or customized by the manufacturer to operate as a card-minding device.
(36) "Hard card" means a reusable card bearing a bingo face or faces.
(37) "Inside ticket" means a blank Keno ticket:
(a) Constructed with eighty (80) blocks numbered one (1) through eighty (80), and
(b) Containing a bet block.
(38) "Jackpot prize in a progressive pulltab game" or "progressive jackpot prize" means a prize in addition to the instant or seal card prizes which is carried over from deal to deal until it is won.
(39) "Jar ticket" means a type of pulltab game ticket that is folded, glued, or stapled.
(40) "Keno" means a numbers game in which:
(a) A participant chooses from one (1) to ten (10) numbers from a pool of eighty (80) numbers; and
(b) The winner and the prize is determined by correctly matching the participant's numbers to the twenty (20) numbers generated in the game.
(41) "Keno equipment" means:
(a) An electronic selection device;
(b) A random number generator;
(c) A computerized Keno system; or
(d) An integrated system of computer hardware and software that.
1. Generates a player ticket;
2. Records a game outcome,
3. Verifies a winning ticket;
4. Produces a management report; or
5 Performs other internal audit controls of a Keno operation.
(42) "Keno manager" means the person in charge of the operation of the Keno game.
(43) "Last sale" means a pulltab game designed by the manufacturer in which a prize is awarded to the person who bought the last pulltab in a deal.
(44) "Merchandise prize" means a noncash prize given away at a charitable gaming event either as a game prize or a door prize.
(45) "Model number" means the name or number designated by the manufacturer that indicates the unique structural design of a hand-held card-minding device or card-minding system component.
(46) "Multipackaged pulltab deal" means a pulltab game consisting of a single deal of not more than 10,000 [~~4,000~~] tickets that is packed in subsets and in which each subset contributes to a prize pool with or without a prize board.
(47) "Multirace ticket" means a single ticket that allows a player to make the same wager on consecutive games.
(48) "Outside ticket" means a computer-generated ticket given

to the player which reflects game and wagering information.

(49) "Perm number" means the number located on a bingo face that identifies the unique pattern of numbers appearing on that face

(50) "Pickle jar, bonanza ball, or hot ball" means games played in conjunction with other bingo games in which:

(a) A bingo ball is selected by the selection device prior to the start of certain bingo games or all bingo games; and

(b) A patron is awarded the amount of money associated with the pickle jar, bonanza ball, or hot ball, if the selected bingo ball is called, and because of that selected ball being called, a patron wins the bingo game being played.

(51) "Player pick bingo" means that the patron picks the numbers which constitute a bingo on his or her face or faces and a machine prints those numbers on the bingo face at the gaming occasion before the game is played.

(52) "Player tracking software" means computer software installed on a card-minding device system or other point of sale system that is used to identify or track certain characteristics of bingo players, including personal data and purchasing habits.

(53) "Progressive bingo" means a bingo game in which the value of the prize is carried forward to the next bingo occasion if no player wins at that session.

(54) "Progressive pulltab game" or "carryover pulltab game" means a pulltab game consisting of one (1) or more deals designed by the manufacturer so that a portion of the deal's predetermined prize payout is designated to a progressive jackpot and the jackpot value may accumulate from one (1) deal to the next deal until won.

(55) "PROM" means programmable ROM.

(56) "Promotional" means any item available at no charge to all participants at an event.

(57) "Proprietary software" means custom computer software developed by the manufacturer that is a primary component of the card-minding device system and is required for a card-minding device to be used in a game of bingo.

(58) "Pulltab" means a charity game ticket.

(59) "Purchased prize" means any merchandise prize that was purchased and not donated.

(60) "Quick pick" means a number selection made for the player by a computer.

(61) "RAM" or "random access memory" means the electronic memory that a computer uses to store information.

(62) "Random number generator" means a device:

(a) For generating number values that exhibit characteristics of randomness; and

(b) Composed of:

1. Computer hardware;

2. Computer software; or

3. A combination of computer hardware and software.

(63) "ROM" or "read only memory" means the electronic component used for storage of nonvolatile information in Keno equipment that provides instructions needed by the computer to begin its operations each time it is turned on and may be either "PROM" or "EPROM".

(64) "Secondary component" means an additional software or hardware component that.

(a) Is part of or is connected to a card-minding device system;

(b) Does not affect the conduct of the game of bingo;

(c) Is provided by the manufacturer; and

(d) May include computer screen backgrounds, battery charge-up software routines, monitors, keyboards, pointer devices, mice, printers, printer software drivers, or charging racks.

(65) "Selected" means a bingo number that has been obtained by the selection device and is ready to be called next by the bingo caller.

(66) "Selection device" means a device that:

(a) May be operated manually or automatically; and

(b) Is used to randomly select bingo numbers.

(67) "Selection pool" means the bingo numbers in a selection device that have not been selected

(68) "Serial number" means a number assigned by the manufacturer to track the individual product.

(69) "Series number" means the number of unique faces contained in a series.

(70) "Set" means a case or cases of paper that contain one (1) of each face in a series

(71) "Site system" means computer hardware, software, and peripheral equipment that:

(a) Is located at the bingo premises;

(b) Is operated by the charitable organization;

(c) Interfaces with, connects with, controls or defines the operational parameters of card-minding devices; and

(d) May include the following components:

1. Point of sale station;

2. A caller verification system;

3. Required printers,

4. Dial-up modem;

5. Proprietary executable software;

6. Report generation software; and

7. An accounting system or database.

(72) "Terminal number" means the unique identification number, if any, assigned by a manufacturer to a specific standard card-minding device.

(73) "Transaction log" means a record of the same information printed on each outside ticket that is:

(a) Retained in the computer's memory; or

(b) Printed out by the computer.

(74) "Verification system" means a book of bingo faces compiled by the manufacturer or an electronic device created by the manufacturer that.

(a) Lists the unique patterns of numbers on each face by perm number, and

(b) Is used to verify the authenticity of a winning face.

(75) "Version number" means a unique number designated by the manufacturer to identify a specific version of software used on or by the card-minding device system.

(76) "Way ticket" means a single ticket that permits wagering on a combination of groups of numbers in various ways designated by the player.

(77) "Week" means a seven (7) day period beginning on Sunday and ending Saturday.

(78) "Year" is defined by KRS 238.505(25).

TONY S. ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY. April 10, 2007
FILED WITH LRC: April 12, 2007 at 2 p.m.
CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, July 9, 2007)

820 KAR 1:015. Issuance of annual license for a charitable organization.

RELATES TO: KRS 238.515(3), 238.525, 238.535, 238.540(1)

STATUTORY AUTHORITY: KRS 238.515(1), (2), (3), (9), 238.525(1), 238.535(9), (11), (12)[, 238.540(1)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.525(1) requires the office to issue an annual or biennial license to a qualified applicant and to establish fees not to exceed the amounts established in KRS 238.535. KRS 238.535(9) requires applicants for licensure to complete a required application form and KRS 238.535(12) requires the office to establish licensure fees not to exceed $300. This administrative regulation establishes the fees and procedures for annual licensure of charitable organizations.

Section 1. Application for Licensure. (1) A charitable organization shall submit a complete, accurate, and verifiable application on

Form CG-1, Application for License for Charitable Organization, at least sixty (60) days prior to the expiration of its license or expected date of gaming.

(2) An application shall not be considered complete until all deficiencies are resolved.

(3) If the applicant does not file a written response to a deficiency request within thirty (30) days or does not provide any requested documents, the application shall be deemed withdrawn.

(4) Once the office has received a complete application, it shall grant or deny the license within sixty (60) days.

(5) The office shall issue a license if the applicant has met the requirements for licensure set forth in KRS 238.535, paid all fees and fines, filed all reports required, filed an acceptable financial plan if required, and complied with all terms and conditions of any applicable settlement agreement or probationary terms.

(6) The following persons shall be required to submit a fingerprint card if the person resides out-of-state:

(a) The chief executive officer;

(b) The chief financial officer; and

(c) Each chairperson.

Section 2. Information Required on License. Licenses issued by the Office of Charitable Gaming shall clearly state the:

(1) Name of the licensee;

(2) Physical address of the licensee;

(3) Effective date [~~of issuance~~] of the license;

(4) Expiration date of the license;

(5) Premises or location at which the charitable gaming will be conducted[~~, if the license is for a charitable organization or a charitable gaming facility~~];

(6) Type of license issued (organization),

(7) Address of the Office of Charitable Gaming; and

(8) The day and time for each session, and the type of gaming to be conducted under the license.

Section 3. Fees for Licensure. (1) The annual license fees for each organization license issued shall be as follows:

(a) $100 for charitable organizations upon initial application or charitable gaming organizations with gross receipts not in excess of $100,000 [~~-$100~~];

(b) $200 for charitable gaming organizations [~~organization~~] with gross receipts over $100,000, but not in excess of $250,000 [~~-$200~~]; or

(c) $300 for charitable gaming organizations [~~organization~~] with gross receipts over $250,000 [~~-$300~~].

(2) A nonrefundable processing fee of twenty-five (25) dollars shall:

(a) Accompany each application for licensure; and

(b) Be credited against the amount of the annual license fee.

(3) An annual license shall not be issued until the annual license fee is paid in full.

(4) The annual license term shall be [~~effective~~] for one (1) year from the effective date of the license [~~issuance~~].

Section 4. Change Request. (1)(a) If the organization wishes to change the date, time, or location of a gaming session, the charitable organization shall submit a written request signed by an officer and a lease for the gaming location to the office by U.S. postage prepaid mail, electronic mail, **hand-delivery**, or facsimile transmission **at least ten (10) days** [~~completed form CG-DTL, Request to Change Playing Location, Day, or Time,~~] prior to the date of the requested change [~~along with a fee of twenty-five (25) dollars and a lease for the gaming location. The change request form shall be signed by an officer~~].

(b) The office shall process this request and issue or deny a license within ten (10) days.

(c) The organization shall not engage in gaming at the requested date, time, or location change if the new license has not been received.

(d) The organization **shall** [~~will~~] be invoiced a fee of twenty-five (25) dollars for the change.

(2) If the organization wishes to change any other information contained in the license application, the charitable organization shall submit those changes in writing [~~a completed form CG-OC, Request to Change Officers or Chairpersons,~~] no later than thirty (30) days after the change is made. The change request [~~form~~] shall be signed by an officer.

[~~(3) Once the office has received a completed change request form, it shall grant or deny the new license within thirty (30) days.~~]

Section 5. Incorporation by Reference. (1) [~~The following material is incorporated by reference:~~

~~(a)~~] Form CG-1, "Application for License for Charitable Organization", 04/07,[~~(04/07)~~"] is incorporated by reference [~~(2/06)";~~

~~(b) Form CG-DTL, "Request to Change Playing Location, Day, or Time (2/06)"; and~~

~~(c) Form CG-OC, "Request to Change Officers or Chairpersons (2/06)".~~]

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY S. ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: April 10, 2007
FILED WITH LRC: April 12, 2007 at 2 p.m.
CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, July 9, 2007)

820 KAR 1:025. Financial [~~Quarterly~~] reports of a licensed charitable organization.

RELATES TO: KRS 238.550(6), (7), (8)[~~(5)~~], 238.570(1)

STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550(6), (7), (8)[~~(5),~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.550(6), (7), and (8) require [~~(5) requires~~] a licensed charitable organization to submit financial [~~quarterly~~] reports. KRS 238.570(1) requires a licensed charitable organization to remit a percentage [~~0.53 of one (1) percent~~] of the gross receipts derived from charitable gaming to the office. This administrative regulation establishes the method and time of filing the financial [~~quarterly~~] reports and remitting payment of the [~~quarterly~~] fees due.

Section 1. [~~Quarterly~~] Reporting Period Defined. (1) For licensed charitable organizations that have gross receipts of $200,000 or less per calendar year and do not have a weekly bingo session, a complete, accurate, legible, and verifiable financial report, in accordance with Section 2 of this administrative regulation, shall be submitted by each licensed charitable organization along with the appropriate fee for every year licensed to game on or before January 31st.

(2) For all other licensed charitable organizations, [~~(a)~~] a complete, accurate, legible, and verifiable financial [~~quarterly~~] report, in accordance with Section 2 of this administrative regulation, shall be submitted by each licensed charitable organization along with the appropriate fee for every quarter licensed to game on or before the following dates:

(a)[~~1.~~] April 30, for the quarter January 1 to March 31;

(b)[~~2.~~] July 31, for the quarter April 1 to June 30;

(c)[~~3.~~] October 31, for the quarter July 1 to September 30; and

(d)[~~4.~~] January 31, for the quarter October 1 to December 31.

(3)[~~(b)~~] If the due date is on a Saturday, Sunday or legal holiday, the report shall be due on the first business day thereafter.

(4) The financial [~~(2) A quarterly~~] report and fee shall be considered filed when due if it has been:

(a) Mailed to the office by first class mail, postage prepaid, to the correct address and postmarked by the due date; or

(b) Received in the office by hand-delivery on or before the due date.

Section 2. Financial [~~Quarterly~~]Reports. (1) A financial [~~quarterly~~] report shall:

(a) Be submitted on Form CG-FIN [~~CG-QR~~], "Licensed Charitable Organization Financial [~~Quarterly~~] Report", including all attachments;[.]

(b) [~~Be submitted for each quarter that the organization is licensed to game;~~

~~(c)~~] Be completed in ink or typed,

(c) [~~(d)~~] Include the original signature and printed name of either the chief executive officer or the chief financial officer of the licensed charitable organization; and

(d) [~~(e)~~] Include the original signature and printed name of the preparer if prepared by an individual other than the chief executive officer or chief financial officer.

(2) If an organization does not have any information to place on an attachment to the financial [~~quarterly~~] report, it shall indicate "not applicable" on the attachment.

(3) To complete the Bingo Paper Supplies Inventory page of Form CG-FIN [~~CG-QR~~], the product description shall be listed in the format "# ON # UP", with:

(a) The number "ON" being the number of bingo faces on a bingo paper sheet; and

(b) The number "UP" being the number of bingo paper sheets contained in a bingo paper pack.

(4) If multiple pages are used for inventory, **each person** [~~then the persons~~] completing the inventory shall sign one page of the pages that **person** [they] completed and initial the remaining pages.

Section 3. Fees Due. The fee imposed by KRS 238.570(1) on gross gaming receipts of a licensed charitable organization shall be remitted by check made payable to "Kentucky State Treasurer" at the time the financial [~~quarterly~~] report is due.

Section 4. Reporting Expenses. All expenses incurred by a licensee shall be reported on the financial [~~quarterly~~] report for the date on [~~quarter in~~] which payment was made, **which shall be** [(]either the date a check was written or an electronic funds transfer was made,[)] regardless of when the supplies were used or the services were rendered.

Section 5. Incorporation by Reference. (1) Form CG-FIN [~~CG-QR~~], "Licensed Charitable Organization Financial [~~Quarterly~~] Report", [(]05/07,[)] [~~(04/97)~~][~~2/96~~][*], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY S. ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: June 7, 2007
FILED WITH LRC: June 8, 2007 at 4 p m.
CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, July 9, 2007)

820 KAR 1:032. Pulltab construction.

RELATES TO: KRS 238 505(5), 238 545(1), (2)

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(2) requires the office to establish standards for pulltab construction, distribution and rules of play. This administrative regulation establishes standards for the construction and distribution of pulltabs.

Section 1. Conformity of Pulltabs. (1) A licensed distributor of charitable gaming supplies and equipment shall distribute in Kentucky only those pulltabs conforming to the requirements of this administrative regulation.

(2) A licensed charitable organization shall sell to the public only those pulltabs conforming to the requirements of this administrative regulation.

Section 2. Pulltab Construction Standards. (1) Pulltabs shall be constructed so that the concealed numbers, symbols, or winner protection features cannot be viewed or determined from the outside of the pulltab using a high intensity lamp of up to and including 500 watts, with or without utilizing a focusing lens.

(2) The deal shall be designed, printed, glued, cut and assembled in a manner to prevent determination of a winning or losing ticket without removing the tabs or otherwise uncovering the symbols or numbers as intended.

(3) Each pulltab in a deal shall bear the same serial number. If a seal card is used with a pulltab deal, the seal card shall bear the same serial number as each pulltab. Only one (1) serial number shall be used in a deal. A serial number used in a deal of pulltabs shall not be repeated by the same manufacturer on that same manufacturer's form number within a three (3) year period

(4) If the pulltab utilizes a window, the numbers or symbols on the pulltab shall be fully visible in the window and shall be placed so that no part of a symbol or number remains covered when the tab is removed. Displacement of the symbol to the left or right in a window may be used for increased game security. Additional security devices or methods, including a laminate underneath a window, may be used by a manufacturer.

(5) It shall not be possible to distinguish winning pulltabs from losing pulltabs through variations in printing graphics or colors, including those involving different printing plates.

(6) All winning pulltabs shall have at least one (1) winner protection feature. In addition, all winning pulltabs that entitle a player to an instant prize of greater than twenty (20) dollars shall include an additional form of winner protection. Numeral jar tickets with colored winning numerals shall not be required to have secondary winner protection.

(7) All pulltabs shall be glued on the window edges and between each window. The glue shall be of sufficient strength and type to prevent the separation or delamination of the pulltab. For banded tickets, the glue shall be of sufficient strength and quality to prevent the separation of the band from the ticket.

(8) The window slits on each break open ticket shall be perforated on at least three cut sides. The ties shall be of a sufficient thickness or strength to prevent unauthorized peering under the windows and so that unauthorized peering under the windows can be detected. It shall not be possible to isolate winning or potential winning tickets from variations to the size or the appearance of a cut edge of the pulltab comprising a particular game.

(9) Except as provided in subsection (10) or (11) of this section, the minimum information that shall be printed on an unopened pulltab with an overall area of two and five-tenths (2.5) square inches or more shall be:

(a) The name of the manufacturer, or its distinctive logo;

(b) The name of the game;

(c) The manufacturer's form number;

(d) The price per individual pulltab;

(e) The unique minimum five (5) digit game serial number, printed on the game information side of the pulltab; and

(f) The number of winners and respective winning numbers or symbols, and specific prize amounts.

(10) A pulltab with an overall area of at least one and six tenths

(1.6) square inches unopened but less than two and five tenths (2.5) square inches unopened shall

(a) Have printed on it, at a minimum, the information listed in subsection 9(a), (b), (c), (d), and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(f) of this section.

(11) A pulltab with an overall area of less than one and six-tenths (1.6) square inches unopened shall:

(a) Have printed on it, at a minimum, the information listed in subsection (9)(a) and (e) of this section; and

(b) Not be required to have the information listed in subsection (9)(b), (c), (d), or (f) of this section.

Section 3. Randomization. Winning pulltabs shall be distributed and mixed among all other pulltabs in a deal to eliminate any pattern between deals, or portions of deals. The pulltab deal shall be assembled so that the winning pulltabs cannot be distinguished. Winning tickets shall be randomly distributed throughout the deal. Banded tickets packaged in bags, rather than boxes, shall be subject to these requirements

Section 4. Packaging and Distribution. (1)(a) Each deal's package, box, or other container shall be sealed or taped at every entry point at the manufacturer's factory with a tamper resistant seal or tape.

(b) The seal or tape shall be visible under the shrink-wrap or from outside the container and shall be constructed to guarantee that, if the container is opened or otherwise tampered with, evidence of the opening or tampering will be easily detected.

(c) The seal or tape shall include a warning to the purchaser that the deal may have been tampered with if the package, box, or other container is received by the purchaser with the seal or tape broken.

(d) If the deal is packaged in a plastic bag, the entry point shall be completely sealed by the application of heat or adhesive [heat-sealed]. The warning may be imprinted in the plastic.

(2) A deal's serial number shall be clearly and legibly placed on:

(a) The outside of the deal's package, box, or other container; or

(b) On the inside of the deal's package, box, or other container if it is clearly visible from the outside of the package, box, or other container.

(3) Manufacturers shall print on or affix to the outside of the package or container of pulltabs or include inside the package or container, in bold print of sufficient size to be easily read, a message that states substantially the following: "tickets must be removed from this packaging container and thoroughly mixed prior to sale to the public."

(4) Manufacturers shall include with every deal of pulltabs a bar code label that contains at a minimum the name of the manufacturer or its distinctive logo, the game form number, and the game serial number. The bar code label shall be visible from the outside of the package, box, or other container.

Section 5. Flares and Seal Cards. (1) Every deal of pulltabs shall contain a flare or a seal card that has printed on it, by the manufacturer, the following information:

(a) The name of the game;

(b) The manufacturer's name or logo;

(c) The manufacturer's form number;

(d) The game serial number;

(e) The ticket count;

(f) The prize structure, including a description of the number of winning pulltabs by denomination, with their respective winning symbols or number combinations, and amounts dedicated to the prize pool in a seal card game with a cumulative prize, or a[,] carryover or progressive prize; and

(g) The cost per play.[; and]

(2) Every deal of pulltabs shall contain instructions on how to play the game.

Section 6. Cumulative Games, and[,] Carryover or Progressive Games. (1) The amount dedicated to the cumulative prize pool, or the carryover or progressive jackpot, shall be predetermined by the manufacturer and built into the payout structure for the game. The dedicated amount shall be printed by the manufacturer on either the flare or seal card for each game or on each ticket in each game.

(2) All games contributing to the cumulative prize pool, or the carryover or progressive jackpot, shall be of the same form number.

(3) The flare or seal card for the carryover or progressive jackpot shall contain an area in which the current amount of the carryover or progressive jackpot can be posted.

(4) If a carryover or progressive pulltab game uses a progressive jackpot prize card that is separate from the jackpot seal, the jackpot card shall contain prize space for the organization to record the serial numbers of all games contributing to the jackpot prize.

Section 7. Event Games. (1) An event game shall not contain a "last sale" feature.

(2) The number of winners and the prize amounts shall be built into the payout structure for the game by the manufacturer.

(3) An event ticket prize shall not exceed the individual ticket prize limit for a pulltab game.

(4) The prize for an event pulltab game shall not be considered a bingo prize.

(5) If a carryover or progressive pulltab game uses a jackpot prize card that is separate from the jackpot seal card, [then] each deal of the game **shall** [must] possess both a seal card and a jackpot prize card that has the serial number of the deal affixed to it by the manufacturer

(6) In a carryover or progressive pulltab game, the organization **shall either** [may] start a new jackpot card with each deal or use the original jackpot card until won. The organization shall maintain each jackpot card used pursuant to 820 KAR 1:036, Section 2(15).

(7) A [No] progressive pulltab game shall **not** be designed by the manufacturer **to give** [that gives] any player odds greater than a fifty (50) percent chance to win the progressive jackpot.

Section 8. Multipackaged Pulltab Deals. Every package shall be played for the deal to show the stated profit. Each package may contain individual winners if desired. If each package contains a winner, the game shall contain a method of verifying from which package the winner was sold.

Section 9. Tracking by Manufacturer. Every manufacturer of pulltabs shall maintain records sufficient to track each deal of pulltabs, by serial number and form number, from the manufacturer to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

Section 10. Tracking by Distributor. (1) Every distributor of pulltabs shall maintain records sufficient to track each deal of pulltabs, by serial number and form number, from purchase by the distributor to the next point of sale for thirty-six (36) months. The records shall be subject to inspection by office staff.

(2) For sales in the Commonwealth of Kentucky, or to residents of Kentucky, the records required under this section shall be deemed sufficient if the distributor records the name of the purchaser and makes and retains a copy of the Kentucky charitable gaming license or exemption number of the purchaser at the next point of sale.

(3) For sales outside the Commonwealth of Kentucky to nonresidents of Kentucky, the records required under this section shall be deemed sufficient if the distributor makes and retains a copy of a state charitable gaming license or a valid state identification card of the purchaser which contains the name, address, date of birth, and state identification number of the purchaser at the next point of sale.

Section 11. Requirements of Distributor Invoice. (1) Distributors selling pulltabs to charitable organizations or other distributors shall provide the charitable organization or other distributor with an invoice that contains, at a minimum, the following information:

(a) The purchaser's name, address, and license number;

(b) The address to which the shipment was delivered;

(c) The date of sale or credit;
(d) The conditions of the sale or credit;
(e) The quantity of pulltabs sold including the number of the deals, the name of each deal, the tickets per deal, and the serial number and form number of the deal;
(f) The total invoice amount;
(g) The name of the person who ordered the supplies;
(h) The name of the person making the delivery;
(i) The date of delivery or date item was picked up for sale or credit;
(j) The place or manner of delivery; and
(k) The name and signature of the person taking delivery, if any.

(2) A distributor may deliver pulltabs to an agreed place or to an identified person. An invoice not challenged within seven (7) days of delivery shall be deemed accurate. Any challenge to an invoice shall be made in writing to the distributor and a copy shall be sent to the office.

Section 12. Defects. (1) If a defect in packaging or construction of a pulltab is discovered by an organization, the defect[~~, or replace the defective items,~~] shall be reported to the distributor within fifteen (15) days. The distributor shall correct the defect, or replace the defective items, within a reasonable time, if possible.

(2) If the office, in consultation with the manufacturer, determines that a defect actually exists, and the defect affects game security or otherwise threatens public confidence in the game, the office shall, with respect to pulltabs for use in Kentucky, require the manufacturer to:

(a) Recall the pulltabs affected that have not been sold at retail to licensed organizations; or
(b) Issue a total recall of all affected deals.

(3) In choosing and directing a particular recall in accordance with subsection (2) of this section, the office shall be guided in each circumstance by any combination of the following factors:

(a) The nature of the defect;
(b) Whether the defect affected game security,
(c) Whether the defect affected game playability;
(d) Whether the defect was limited to a specific number of deals of a particular form number;
(e) Whether the defect was easily detectable by a charitable organization;
(f) Whether the defect was easily detectable by members of the general public;
(g) Whether the defect threatens public confidence in the game; or
(h) Whether the defect is capable of being used to adversely affect the fair play of the game.

(4) In consultation with the manufacturer, the office shall determine a specific date for the recall to be completed and whether the manufacturer is required to reimburse the organization or distributor.

TONY S. ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: June 7, 2007
FILED WITH LRC: June 8, 2007 at 4 p.m.
CONTACT PERSON. Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION
Department of Public Protection
Office of Charitable Gaming
(As Amended at ARRS, July 9, 2007)

820 KAR 1:036. Pulltab rules of play.

RELATES TO: KRS 238.505(5), 238.545(1), (2)
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) and (9) require the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(2) requires the office to establish standards for pulltab rules of play. This administrative regulation establishes standards for the play of pulltabs.

Section 1. General Provisions. (1) All individuals involved in the sale of pulltabs shall be trained in the proper conduct of the game and control of funds.

(2) The chairperson shall be in full charge of the licensed gaming occasion, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization, except for licensed charity fundraising events.

(4) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall also be locked and access shall be controlled.

(5) Except for a charity fundraising event, a volunteer at any other charitable gaming occasion at which pulltabs are sold shall not purchase or play pulltabs at that occasion. At a charity fundraising event, a volunteer may purchase or play pulltabs on a day the volunteer did not work, and from a deal the volunteer did not sell.

(6) [~~House rules.~~] If the charitable organization has house rules concerning its gaming occasion, the house rules shall.

(a)1. Be posted in at least two (2) conspicuous locations at the gaming occasion and announced prior to the commencement of the gaming occasion; or
2. Be listed on the program;
(b) Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;
(c) Be followed; and
(d) Include the organization's name and license number.

(7) An organization shall perform an inventory and obtain permission of the office before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper or any portion thereof.

(8)(a) When an organization ceases to game, **the organization shall:**

1. Perform a final inventory; and

2.a. Return all unused product to a distributor;

b. Donate the product to another organization with the permission of the office; or

c. Destroy the product with the permission of the office.

(b) Abandoned product shall be seized by the office and destroyed. [~~It~~] [~~they~~] [~~shall perform a final inventory and return all unused product to a distributor, donate the product to another organization with the permission of the office, or destroy the product with the permission of the office. Abandoned product shall be seized by the office and destroyed.~~]

Section 2. Playing (1) The flare or seal card, including a progressive jackpot card relating to a carryover or progressive prize, or a prize board relating to a game with a cumulative prize, shall be posted by the licensed charitable organization in the vicinity of the deal and in full and complete view of the players while the deal is in play.

(2) Pulltabs shall not be sold to the public from the original packing box or container. Pulltabs shall be removed from the original box or container and mixed together prior to sale.

(3) If a deal of pulltabs is packed in more than [~~that~~] one (1) box or container, an individual container shall not designate a winner or contain a disproportionate number of winning or losing tickets. Each package, box, or container shall be placed out for play at the same time unless the deal is designed by the manufacturer to be played in subsets. Those subsets may be placed out for play in succession.

(4) Pulltabs which have been marked, defaced, altered, tampered with, received in packaging that is not tamper-resistant, or otherwise constructed in a manner which tends to deceive the public, or affect the chances of winning or losing, shall not be placed into

play. The organization shall notify the Office of Charitable Gaming of the existence of these tickets in writing within fifteen (15) days.

(5) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal matches [~~match~~] the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. If the charitable organization determines that serial numbers on tickets within a deal do not match the serial number on the flare or seal card accompanying the deal, the organization shall not place the deal into play and shall notify that distributor. If the distributor does not correct the problem within thirty (30) days, the organization shall notify the office in writing.

(6) Any licensed charitable organization which sells pulltabs from its office location or from a pulltab dispenser shall comply with 820 KAR Chapter 1 regarding the play, proper recordkeeping, and reporting of those sales. The sales shall be reported on the financial [~~quarterly~~] report.

(7)(a) If a deal is not played to completion and there remain unsold winning pulltabs, the licensed charitable organization conducting the gaming shall sell the remaining pulltabs on the next appointed date for charitable gaming activities.

(b) If no future date is anticipated, the licensed charitable organization shall consider the deal closed or completed, declare the winners, and post winning numbers for fifteen (15) days with information directing the method of claiming a prize at its office location. All unsold pulltabs shall be retained as required in subsection (15) [~~(14)~~] of this section.

(c) If no winning pulltabs remain in the deal, the licensed charitable organization shall consider the deal closed or completed, declare the winners, and shall retain unsold pulltabs as required in subsection (14) of this section.

(d) A licensed charitable organization shall not complete play of a deal or a seal card it did not initiate.

(8) A pulltab shall not be sold to the public at a price different than that printed by the manufacturer of the pulltab upon the flare or seal card which accompanies the deal.

(9) Only authorized representatives of the charitable organization conducting the event at which pulltabs are sold shall verify the serial numbers and winner protections for all winning pulltabs redeemed.

(10) If playing pulltabs that utilize a seal card, a charitable organization shall not award a prize to the holder of a winning pulltab unless the serial number on the ticket presented for redemption matches the serial number on the seal card. In a progressive pulltab game, the serial number on the tickets shall be checked in accordance with Section 6 of this administrative regulation.

(11) A charitable organization shall award prizes to winners of pulltabs only in accordance with the prize structure indicated on the flare or seal card accompanying the deal of tickets as designed by the manufacturer. If multiple prize structures are indicated on the flare or seal card, the charitable organization shall announce to the patrons and circle on the flare or seal card the prize structure to be awarded before placing the deal into play.

(12) A holder of a winning pulltab shall have fifteen (15) days to redeem the winning ticket. If the prize is not claimed within fifteen (15) days, the prize shall be considered unclaimed and be retained as property of the organization.

(13) Once redeemed, the holder of a winning pulltab shall be paid no later than five (5) days from the date of redemption.

(14) All winning pulltabs shall have the winning symbol or number defaced or punched by an authorized representative of the charitable organization immediately after redemption.

(15)(a) The charitable organization shall retain, for a period of twelve (12) months, to allow auditing by the staff of the office:

1. All winning pulltabs with a prize value of fifty (50) dollars and above;

2. The flare from all winning pulltabs with a prize value of fifty (50) dollars and above;

3. All seal cards with a prize value of fifty (50) dollars and above;

4. All prize boards in cumulative games with a prize value of fifty (50) dollars and above; and

5. All unsold pulltabs.

(b) These records may be maintained at the gaming location.

(c) The pulltabs, flares, prize boards in cumulative games, and seal cards shall be disposed of by burning in compliance with state and federal law, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab, flare, prize board, or seal card or any portion thereof.

(16) The fair market value of bingo paper, a card-minding device, or each pulltab given away as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, or pulltab at that gaming occasion.

(17)(a) If bingo paper is awarded [~~given away~~] as a [~~promotional item or a~~] merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed;

4. The amount of bingo paper given in exchange for the voucher; and

5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its session records.

(18)(a) If a card-minding device is awarded [~~given away~~] as a [~~promotional item or a~~] merchandise prize, whether as a door prize or game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The number of card-minding devices and the number of faces loaded on each device given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device.

(d) The organization shall retain the voucher with its session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher involving a card-minding device.

(19)[~~(a)~~] If a pulltab is awarded [~~given away~~] as a promotional item or a door prize, the amount and description of the pulltab given away shall be listed on the gaming occasion program [~~patron shall be given a voucher.~~

~~(b) The voucher shall be completed with:~~

~~1. The name, address, and phone number of the patron redeeming the voucher;~~

~~2. The date on which it was awarded;~~

~~3. The date on which it was redeemed; and~~

~~4. The name, serial number, form number, and amount of the pulltabs given in exchange for the voucher.~~

~~(c) Once the voucher is completed, it shall be redeemed for the pulltabs.~~

~~(d) The organization shall retain the voucher with its session records~~].

(20)[~~(a)~~] If a pulltab is awarded [~~given away~~] as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs from the pulltab manager by transfer of cash from bingo payout to pulltab sales and it shall be recorded as a sale on the session [~~complete a voucher.~~

~~(b) The voucher shall include:~~

~~1. The name and serial number of the pulltab game and the number of pulltabs awarded; and~~

~~2. The printed name and signature of the person in charge of bingo payouts.~~

~~(c) The organization shall retain the voucher with its pulltab receipt~~] records.

(21) Vouchers shall be redeemed on the same day as awarded.

Section 3. Jar Tickets. Jar tickets shall be played and prizes awarded as stated on the flare received with each deal.

Section 4. Seal Card Games. (1) The organization shall post

the seal card for the deal in play at the location of the seal game while the deal is in play.

(2) If a deal with a seal card is not completed during a gaming occasion, the organization shall require the patrons with holders to sign the seal card and provide a means of contacting them when the winner is declared.

(3)(a) The seal for the deal shall be broken or torn open in plain view of all persons present when:

1. All tickets from a deal have been sold;

2. All the winning tickets from a deal have been sold;

3. All the lines on the sign-up card have been filled; [or]

4. The deal has been closed, because no future date is anticipated; or

5. Instructed to [As instructed] by the game as designed by the manufacturer.

(b) Each winning combination, [the specific form number,] the name of the game, and the serial number of the deal shall be announced and posted at the location of the game.

(c) The date the seal tab was opened shall be recorded on the seal card.

Section 5. "Last Sale" Pulltabs. "Last Sale" pulltabs shall only be sold by an organization at its office location and not during a bingo session.

Section 6. Seal Card Games with Carry Over or Progressive Prizes. (1) The prize pool for a progressive pulltab game shall be established only through the play of deals of the same game which bear a manufacturer's form number identical to the form number of any previously-played deals contributing to the prize pool.

(2) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal. The serial number on the tickets **shall not be required to** [may not] match the serial number on the progressive pulltab jackpot card if the deal is the second or subsequent deal played in the progressive game and one (1) progressive jackpot card is used for more than one (1) deal.

(3) After a progressive pulltab game has been started, it shall remain in play continuously until the progressive jackpot prize is determined. If the game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day its [their] office is open.

(4) The seal card for each deal in a progressive game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the progressive jackpot prize pool.

(5) Every seal card for each deal that has been played or is being played in the course of a progressive pulltab game, together with any progressive jackpot card, shall be displayed at all times while the game is in play, until the progressive jackpot prize is won.

(6) The serial numbers for each deal contributing to a carryover or progressive jackpot prize shall be recorded in the gaming occasion records.

(7) A progressive or carryover pulltab game shall be played in accord with the manufacturer's specifications for the determination of a winner.

(8) As long as money remains in the jackpot prize pool, the organization shall continue to play the same games with the same form number.

(9) If a game bearing the same manufacturer's form number is no longer available, the organization shall contact the office for instructions on how to proceed.

(10)(a) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times either:

1. The jackpot card being played and each seal card contributing to the jackpot prize pool; or

2. A legible poster identifying by name, serial number, and form number each deal of pulltabs contributing an amount to the jackpot prize pool.

(b) The poster or seal cards shall remain displayed during bingo sessions or other charitable gaming activities conducted by the organization until the expiration of fifteen (15) calendar days after the organization awards the prize.

(c) If a progressive jackpot prize is not awarded, the organization shall continue to display the poster or seal cards during bingo sessions or other charitable gaming activities it conducts for at least fifteen (15) calendar days after the date the organization considers the game closed and retains the prize as its property.

(d) If a progressive prize remains unpaid, a licensed charitable organization shall display, in full and complete view of the players and at all times, the current value of the jackpot.

(11) An organization shall not award the jackpot prize in a progressive pulltab game unless the serial number and form number on the winning ticket match [matches] the serial number and form number on a seal card from a deal of tickets which contributed to the jackpot prize.

(12) For jackpot prizes of $250 or over, the [An] organization shall attach a copy of the valid state identification card which contains the name, address, date of birth, and state identification number of the winner to the jackpot prize card.

(13) The jackpot prize in a progressive game may accrue in excess of $2,400 dollars. An individual jackpot prize shall not be paid in excess of $2,400. The amount of the current jackpot, the amount contributed, the payouts made, and the jackpot carried forward to the next session at each gaming occasion shall be recorded in the gaming occasion record.

(14) Any advertisement regarding the progressive jackpot may state the total amount in the jackpot prize pool as long as it also includes the statement that the individual payout shall not exceed $2,400.

(15) A licensed charitable organization shall report to the office concerning its play of seal card games with a progressive prize on the financial [quarterly] report.

(16) The jackpot prize pool in a progressive game shall be considered an adjusted gross receipt that shall be deposited within two (2) business days of the gaming occasion.

Section 7. Seal Card Games with Cumulative Prizes. (1) The prize pool for a cumulative pulltab game shall be established only through the play of deals of the same game which bear a manufacturer's form number identical to the form number of any previously played deals contributing to the prize pool.

(2) Before placing a deal into play, the charitable organization shall verify that the serial number on the pulltabs within each deal match the serial number on the flare, prize board, or seal card accompanying the deal by conducting a random sampling of pulltabs within each deal.

(3) After a cumulative pulltab game has been started, it shall remain in play continuously until the cumulative prize pool has been awarded. If **that** [such] game is begun at a bingo session, it shall be offered at each succeeding bingo session of the licensee. If the game is begun at the office location, it shall be offered on each succeeding day their office is open.

(4) Prizes shall be offered and awarded only in accord with the manufacturer's predesignated prize structure for the game.

(5) The seal card for each deal in a cumulative pulltab game shall show, in addition to all other information required for flares and seal cards, the amount dedicated to the cumulative prize pool.

(6) Every seal card for each deal that has been played or is being played in the course of a cumulative pulltab game, together with any prize board, shall be displayed at all times while the game is in play, until the cumulative prize pool is awarded.

(7) The serial numbers for each deal contributing to a cumulative prize pool shall be recorded in the gaming occasion records.

(8) An organization shall not award the cumulative prize pool unless the serial number **and form number** on the winning ticket matches the serial number **and form number** on a seal card from a deal of tickets which contributed to the cumulative prize board.

(9) A cumulative prize board shall not contain prizes totaling in excess of $2,400.

(10) A licensed charitable organization shall report to the Office concerning its play of seal card games of cumulative games on the financial [quarterly] report.

TONY S. ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: June 7, 2007
FILED WITH LRC: June 8, 2007 at 4 p m.
CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENT AND PUBLIC PROTECTION CABINET
Department Of Public Protection
Office Of Charitable Gaming
(As Amended at ARRS, July 9, 2007)

820 KAR 1:046. Bingo rules of play.

RELATES TO: KRS 238.545
STATUTORY AUTHORITY: KRS 238.515(2), (9), 238.545(1)(b)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(9) authorizes the office to promulgate administrative regulations necessary to carry out the purposes and intent of KRS Chapter 238. KRS 238.515(2) authorizes the office to establish charitable gaming standards. KRS 238.545(1)(b) requires the office to promulgate an administrative regulation concerning use and control of card-minding devices. This administrative regulation establishes standards for the conduct of play of bingo.

Section 1. General Provisions. (1) All individuals involved in the conduct of bingo shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson shall be in full charge of the licensed gaming occasion, supervise and direct all volunteers, and be responsible for assuring the proper receipt and recording of gaming funds.

(3) Except for Braille cards intended for use by blind players, bingo paper or card minding devices shall not be reserved by the charitable organization for any player. Legally-blind players may use their own cards if the licensee does not make Braille cards available. In accordance with KRS 238.505(15), Braille cards shall not be considered gaming supplies and equipment and may be purchased from ordinary sources of supply.

(4) More than one (1) charitable organization shall not conduct gaming at the same time and location as another charitable organization except for licensed charity fundraising events.

(5) If a bingo session is cancelled once it is commenced, an organization may refund a portion of the purchase price of the bingo paper or card-minding device. An organization shall not continue the session or award the prizes at a later date.

(6) Each organization's gaming supplies shall be maintained in a location separate from another organization's gaming supplies. This location shall be locked and access shall be controlled. An extra set of bingo balls shall not be stored at the caller's stand but shall be stored with the other charitable gaming supplies.

(7) A volunteer at a charitable gaming occasion at which bingo cards or faces are sold shall not purchase or play bingo cards or faces at that occasion unless the volunteer's duties are complete for the occasion. Once a volunteer starts playing bingo, that person shall not volunteer for the remainder of that gaming occasion.

(8) [~~House rules.~~] If the charitable organization has house rules concerning its bingo session, the house rules shall:

(a)1. Be posted in at least two (2) conspicuous locations at the gaming occasion and announced prior to the commencement of the gaming occasion; or

2. Be listed on the program;

(b) [~~Be kept with the organization's session records;~~

~~(c)~~] Not conflict with KRS Chapter 238 or 820 KAR Chapter 1;

(c) [~~(d)~~] Be followed; and

(d) [~~(e)~~] Include the organization's name and license number.

(9) Every ball in the bingo machine or other selection device shall be placed out for verification at the commencement and at the completion of each bingo session.

(10) Individual bingo paper sheets in a pack shall not be sold as individual bingo paper sheets.

(11) The organization shall buy a complete set of paper and use that paper before starting another set.

(12) A charitable organization shall not separate faces on one (1) paper sheet or any paper sheets in a pack prior to play.

(13) The price for each type of bingo sheet, pack, or package shall be listed on the bingo program.

(14) Bingo paper sheets, bingo paper packs, and bingo paper packages shall be used during the bingo session for which they were purchased. An organization shall not allow a player to carry over purchased, but unused, bingo paper sheets, bingo paper sheet packs, or bingo paper packages to a subsequent bingo session.

(15) An organization shall not allow a player to play bingo paper that was not purchased at that session, except for Braille cards as provided in subsection (3) of this section.

(16) The organization shall not duplicate or otherwise make copies of bingo paper.

(17) If an organization sells the same paper packs or paper sheets for different prices, the packs or sheets shall be distinguishable by serial number [~~and color or border~~].

(18) An organization shall not sell bingo paper in a [~~If an organization bundles bingo paper faces, it shall record the serial number and the number of packs sold for each type of pack that makes up the~~] bundle.

(19) If an organization sells [a] bingo paper as a package, **the package shall become** [~~it becomes~~] a unique item with a certain price and the items in the package shall not be sold individually unless a separate serial number is used.

(20) If an organization games in back to back sessions, it may pre-sell paper for the second session as long as a different set of paper is used with a different color or border and a different serial number. The money from the preselling of paper shall be deposited with the second session receipts and the sales recorded on the second session gaming occasion records. If the price for the presold paper is discounted, the organization shall list this discount on the gaming occasion program and use a third set of paper with a different serial number.

(21) An organization shall perform an inventory and obtain permission of the office before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying, or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper, or any portion thereof.

(22)(a) When an organization ceases to game, **the organization shall:**

1. Perform a final inventory; and

2.a. Return all unused product to a distributor;

b. Donate the product to another organization with the permission of the office; or

c. Destroy the product with the permission of the office.

(b) Abandoned gaming supplies shall be seized by the office and destroyed. [~~it~~] [~~they~~] [~~shall perform a final inventory and return all unused product to a distributor, donate the product to another organization with the permission of the office, or destroy the product with the permission of the office. Abandoned gaming supplies shall be seized by the office and destroyed.~~]

Section 2. Playing. (1) All players shall be physically present at the location where the bingo game is held in order to play the game or claim a prize offered.

(2) The bingo session shall start when the balls are verified. The balls shall be verified before the [~~first ball is selected including the~~] pickle jar, bonanza ball, or hot ball is selected and called.

(3) Before selecting or calling the first number in a game, the bingo caller shall call out the amount of the game prize to be awarded.

(4) Before selecting and calling the first number in a game, the bingo caller shall announce the pattern or arrangement of squares to be covered to win the game. This information shall also be listed in the bingo program.

(5) After selecting each number, the bingo caller shall:

(a) Clearly announce the number;

(b) Display the ball or other device used in a manner allowing the players to see the number, except displaying the ball shall not be required during a speed game;

(c) Cause the ball or other device to be placed in a ball tray or other device so as to prevent it from being placed back into the selection pool; and

(d) Enter each letter and number called on a flashboard or similar device for player viewing.

(6) A winner shall be determined when the preannounced pattern of squares is covered by a player on a card.

(7) It shall be the player's responsibility to notify a volunteer including the chairperson or caller [~~the game operator or caller~~] that the player has a winning bingo combination as announced.

Section 3. Pickle Jar, Bonanza Ball, or Hot Ball. If the organization gives an additional prize if a patron wins on a certain number, the rules of play, including how it is awarded at the maximum payout, and cost to enter shall be listed on the bingo program. These numbers may be selected and posted before the first game is called.

Section 4. Break Open Bingo. (1) A break-open bingo game shall begin when, in the presence of players attending the bingo occasion, the organization calls and posts, either manually or by use of a flashboard, a predetermined quantity of randomly selected bingo numbers from a selection device or a separate bingo number container. If a flashboard is used, these numbers shall be posted on a separate board than the regular bingo board unless the regular board is capable of keeping track of these numbers separately. The balls shall then be placed back into the selection pool until the game is played on the program.

(2) Sealed bingo paper sheets for a break open game may be sold throughout the bingo occasion. Additional bingo paper sheets for a break open game shall not be sold after the organization resumes calling letters and numbers when the game is played on the program.

(3) An organization may allow players to trade break open bingo faces for new faces.

(4) If the charitable organization allows players to trade break open bingo faces for new faces, two (2) sets of the game faces shall be maintained. One (1) set shall be known as the "original set" and shall be of a different serial number than the second set, known as the "trade in" set.

(5) An organization shall list on the bingo program the price of the original set and the trade-in set.

Section 5. Player Pick. If the charitable organization offers a Player Pick game, the requirements in this section shall apply. (1) A player shall select numbers between one (1) and seventy-five (75). A player shall not select more than five (5) numbers for each column. The player may allow the machine to select the numbers.

(2) Duplicate numbers shall not be played on a purchased face. If duplicate numbers appear on a face, the card shall be void.

(3) Once selected, the machine shall print a face with the selected numbers.

(4) The faces shall conform to the construction and randomization standards set forth in 820 KAR 1:042.

(5) The price of each face and the amount of numbers that will be chosen shall be listed on the bingo program.

(6) The numbers shall be daubed as the balls are called when the game is played as listed on the bingo program.

(7) A player shall win if he or she is the first person to cover the numbers.

Section 6. Continuation Games. (1) Multiple patterns may be played on one (1) bingo face. Each portion of the continuation game shall be considered a single bingo game, even though the bingo balls shall not be returned to the selection pool after a winner has been determined and verified.

(2) Each winning pattern shall be verified independently.

Section 7. Progressive Bingo Games. (1)(a) Progressive games or prizes connected to a bingo game or conditioned on winning a bingo game shall be permitted only if prizes awarded on progressive games are included in the prize limit established in KRS 238.545(1), regardless of the method by which a player is eligible to participate

(b) The licensed charitable organization shall be responsible for ensuring that the value of any progressive bingo game prize, when added to the values of the other prizes of the same date or occasion, does not exceed the $5,000 limit.

(c) All receipts on progressive bingo games shall be reported to the office as gross receipts for the date collected pursuant to KRS 238.550.

(2) Once a progressive bingo game has been started, the game shall be played in the same manner at every occasion until the prize is awarded. The jackpot prize shall be offered at each successive bingo occasion for that charitable organization until the jackpot prize has been won.

Section 8. Winner Verification and Registration. (1) Manufacturers of bingo paper shall make available for purchase a verification book or other verification system for all paper manufactured.

(2) The charitable organization conducting a bingo game shall use a reliable verification system that corresponds with the set of paper in play.

(3) When a player declares a winning bingo, the following steps shall be followed for winner verification:

(a) The game shall be stopped before the next number is called. If the next number has been selected, it shall be secured to ensure that if the declared "bingo" is invalid, the game will continue.

(b)1. If an electronic verifier or verifier book is used, a volunteer for the charitable organization shall:

a. Show the winning face to a neutral player, who shall be a player other than the winner; and

b. Call back the perm number while in front of the neutral player.

2. If any other verification system is used, a volunteer for the charitable organization shall:

a. Show the winning face to a neutral player, who shall be a player other than the winner; and

b. Call back the winning combination while in front of the neutral player.

(4) The caller shall ask at least twice if there are any other winners before announcing the close of the game. If playing a continuation game, the caller shall ask at least twice if there are any other winners before the close of that part of the game.

(5) If more than one (1) winner is declared in a bingo game, the following method of awarding prizes shall apply:

(a) Cash prizes shall be divided equally among the verified winners; and

(b) If the prize is something other than cash and cannot be divided among winners, prizes of equal proportionate value shall be awarded.

Section 9. Prizes. (1) If a merchandise prize or discount is available to everyone, it shall be considered a promotional item and counted as an expense.

(2) If a merchandise prize or discount is not available to everyone, it shall be included in the prize limit established in KRS 238.545(1) at its fair market value. It shall be included in expenses for purchased prizes at actual cost. If the merchandise prize is a gaming supply, it shall be included in supplies expense at actual cost.

(3) The fair market value of bingo paper, a card-minding device, or pulltabs **awarded** [~~given away~~] as a merchandise prize shall be the price that a patron would have paid for the same bingo paper, card-minding device, or pulltab at that gaming occasion.

(4)(a) If bingo paper is **awarded** [~~given away~~] as [~~a promotional item,~~] a door prize[~~,~~] or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed;

4. The amount of paper given in exchange for the voucher; and

5. The serial number of the bingo paper.

(c) Once the voucher is completed, it shall be redeemed for the bingo paper.

(d) The organization shall retain the voucher with its session records.

(5) If bingo paper is **awarded** [~~given away~~] as a promotional item, the description of the paper shall be listed on the program with "free" or "promotional" listed as the price. If the organization also sells that type of paper, a separate set of paper with a separate serial number shall be used.

(6)(a) If a card-minding device is **awarded** [~~given away~~] as a [~~promotional item,~~] a door prize[~~,~~] or a bingo game prize, the patron shall be given a voucher.

(b) The voucher shall be completed with:

1. The name, address, and phone number of the patron redeeming the voucher;

2. The date on which it was awarded;

3. The date on which it was redeemed; and

4. The number of card-minding devices and the number of faces loaded on each device given in exchange for the voucher.

(c) Once the voucher is completed, it shall be redeemed for the card-minding device.

(d) The organization shall retain the voucher with its session records.

(e) There shall be a specific button on the point of sale programmed for each type of voucher and package involving a card-minding device.

(7) If a card-minding device is **awarded** [~~given away~~] as a promotional item, the description of the promotional package shall be listed on the program with "free" or "promotional" listed as the price. The point of sale shall have a specifically described discount button for this promotion.

(8) If an organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed, and the coupon and the voucher shall be retained with the gaming occasion records.

(9) If the organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the gaming occasion records.

(10) [~~(6)(a)~~] If a pulltab is awarded [~~given away~~] as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs from the pulltab manager by transfer of cash from bingo payout to pulltab sales and it shall be recorded as a sale on the session records. [~~complete a voucher.~~

~~(b) The voucher shall include:~~

~~1. The name and serial number of the pulltab game and the number of pulltabs awarded, and~~

~~2. The printed name and signature of the person in charge of bingo payouts.~~

~~(c) The organization shall retain the voucher with its pulltab receipt records.~~]

(11) [~~(7)~~] Each bingo winner shall be determined and every prize shall be awarded and delivered on the same day on which the bingo was conducted.

(12) [~~(8)~~] Vouchers shall be redeemed on the same day as awarded.

TONY ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD CRESS, Deputy Secretary
For TERESA HILL, Secretary
APPROVED BY AGENCY: June 7, 2007
FILED WITH LRC: June 8, 2007 at 4 p.m.

CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department Of Public Protection
Office Of Charitable Gaming
(As Amended at ARRS, July 5, 2007)

820 KAR 1:050. Raffle standards.

RELATES TO: KRS 238 545(3), 238.550(5)
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9).
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.515(2) authorizes the Office of Charitable Gaming to establish reasonable standards for the conduct of charitable gaming and KRS 238 515(9) authorizes the office to promulgate administrative regulations necessary to implement KRS Chapter 238. This administrative regulation establishes standards for the construction and distribution of raffle materials and for the conduct of raffles.

Section 1. Raffle Ticket Construction. (1) Raffle tickets shall have a detachable section and shall be consecutively numbered.

(2) The detachable section of the ticket shall bear a duplicate number corresponding to the number on the ticket and shall provide space for the purchaser's name, complete address, and telephone number.

(3) The following information shall be printed on each ticket:

(a) The date and time for each drawing;

(b) The location of each drawing;

(c) The name of the charitable organization conducting the raffle;

(d) The charitable organization's license number or exemption number, if any;

(e) The price of the ticket, and

(f) Each prize to be awarded with a fair market value over $500.

(4) The requirements of subsections (2) and (3) of this section shall be waived if:

(a) The raffle tickets sell for $1 or less; [~~sales are initiated and concluded and all winners are selected within a twenty-four (24) hour period and the total fair market value of all raffle prizes awarded in any twenty-four (24) hour period does not exceed $250;~~]

(b) The raffle sales are initiated and concluded and all winners are selected at a special charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at licensed special limited charity games.

Section 2. Raffle Prizes. (1) A charitable organization conducting a raffle in which real or personal property prizes are to be awarded shall be responsible for the transfer and delivery of the prize without lien or interest of others.

(2) All raffle prizes shall be awarded as indicated on the raffle ticket unless the event at which the raffle was to be conducted is postponed. If the raffle is postponed, all reasonable efforts shall be made to notify ticket holders of the new drawing date.

Section 3. Conduct of Raffles. (1) Any person holding a raffle ticket shall be permitted to observe the raffle drawing.

(2) A person shall not be required to be present at a raffle drawing in order to be eligible for the prize drawing.

(3) Each ticket seller shall return to the charitable organization the stubs or other detachable sections of all tickets sold prior to the drawing.

(4) Before drawing, the charitable organization shall place each stub or other detachable section of each ticket sold into a receptacle from which the winning tickets are to be drawn. The receptacle shall be designed so that each ticket placed in it has an equal chance to be drawn.

(5) If the winner is not present at the drawing, the organization shall notify the winner by certified mail within seven (7) days of the drawing that **the winner** [~~they~~] shall claim the prize within thirty (30) days.

(6) If a winner does not wish to claim the prize but wishes to donate it to the organization, **the winner** [~~they~~] shall provide the organization a **written** statement within the thirty (30) day period stating that **the winner wishes** [~~they wish~~] to donate the prize to

the organization. A prize winner shall not donate the prize back to the organization if to do so would violate KRS 238.540(7).

(7) If [Otherwise, if] a raffle winner does not claim the prize or donate it to the organization within thirty (30) days after having been contacted, the organization shall notify the Office of Charitable Gaming and draw another ticket in the presence of office personnel.

(8)[(7)] The requirements of subsections (5), [and] (6), and (7) of this section shall be waived, and the organization shall be allowed to draw tickets until a winner is present if:

(a) The raffle tickets sell for $1 or less; [sales are initiated and concluded and all winners are selected within a twenty-four (24) hour period, and the total fair market value of all raffle prizes awarded in any twenty-four (24) hour period does not exceed $250;]

(b) The raffle sales are initiated and concluded and all winners are selected at a licensed charity fundraising event; or

(c) The raffle sales are initiated and concluded and all winners are selected at a licensed special limited charity fundraising event.

TONY ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD CRESS, Deputy Secretary
For TERESA HILL, Secretary
APPROVED BY AGENCY: June 7, 2007
FILED WITH LRC: June 8, 2007 at 4 p.m.
CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION
Department Of Public Protection
Office Of Charitable Gaming
(As Amended at ARRS, July 9, 2007)

820 KAR 1:055. Charity fundraising event standards.

RELATES TO: KRS 238.515(2), (4), (9), 238 535, 238.545, 238.547

STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.545(4)

NECESSITY, FUNCTION, AND CONFORMITY: The Office of Charitable Gaming is authorized by KRS 238.515(2) to establish reasonable standards for the conduct of charitable gaming. KRS 238.545(4) requires a license in order to conduct a charity fundraising event. This administrative regulation establishes standards for the conduct of charity fundraising events.

Section 1. Issuance of License. (1) An organization shall submit a complete, accurate, and verifiable application on Form CG-Schedule A, Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License, for a charity fundraising event at least thirty (30) days prior to the scheduled date for the charity fundraising event.

(2) A processing fee of twenty-five (25) dollars shall accompany each application for licensure.

(3) At the time the application is filed, the organization shall provide the office with a copy of the executed lease, if applicable.

(4) All information requested by the office shall be submitted and reviewed before a license may be granted.

(5) The office shall issue a license if the applicant possesses a regular charitable gaming license and has met the requirements for licensure set forth in KRS 238.505(8) and 238.545(4).

(6) [The license shall be issued for the county in which the organization currently holds its regular gaming license.

(7)] The event shall not be advertised nor preregistrations taken until a license is issued.

(7) [(8)] Once a license is issued, players may preregister prior to the day of the event for the event only if payment is received by credit card, check, or electronic fund transfer.

(8) [(9)] Pursuant to its discretion under KRS 238.505(8), the office has determined that charity game tickets, or pulltabs, shall not be an approved game of chance at a charity fundraising event held by an exempt organization.

Section 2. Special Limited Games Played at a Charity Fundraising Event. [(1)] The office shall grant approval to play special limited games at a charity fundraising event if the information contained in the application and the totality of the circumstances show that the event meets the requirements of KRS 238.545(4)(d).

[(2) Special limited charitable games played at charity fundraising events pursuant to KRS 238.545 (4)(d) shall comply with KRS 238.547.

(3) If the special limited charity games are played as a tournament, then.

(a) A record of attendance shall be kept for the special limited charity games; and

(b) The cost to enter, the cost of the buy backs, the rules of the game, the manner for raising blinds or closing tables, and the prizes shall be listed on the gaming occasion program. The prizes may be listed as a percentage of the receipts.]

Section 3. Volunteers. (1) All individuals involved in the conduct of a charity fundraising event shall be trained in the proper conduct of the game and the control of funds.

(2) The chairperson shall:

(a) Be in charge of the licensed gaming occasion;

(b) Supervise and direct all volunteers; and

(c) Be responsible for assuring the proper receipt and recording of gaming funds.

Section 4. Equipment Used for Events. (1) Poker tables, blackjack tables, prize wheels, and chips, scrip, or imitation money shall not be considered charitable gaming supplies or[, and] equipment and may be purchased from ordinary sources of supply. The organization shall not pay for poker tables, blackjack tables, prize wheels or chips, scrip, or imitation money from the charitable gaming account.

(2) Roulette wheels and craps tables shall be considered charitable gaming supplies and shall be obtained from a licensed distributor. The organization shall pay for roulette wheels and craps tables from the charitable gaming account.

(3) If special limited charity games are played, the organization shall provide the office with a copy of the executed contract for the use of those supplies no later than thirty (30) days following the event. This contract shall specify exactly the items provided, at what cost, and from whom.

Section 5. Expenses. (1) The organization shall pay the gaming expenses for the event from the gaming account. All other expenses shall be paid from the general account.

(2) If an expense is both a gaming expense and a general expense, the expense shall be prorated pursuant to the amount of gross receipts obtained from gaming and nongaming events. The full amount shall be paid from the general account and the amount attributable to gaming shall be reimbursed from the gaming account to the general account.

Section 6. Incorporation by Reference. (1) Form CG-Schedule A, "Application for Charity Fundraising Event License or Special Limited Charity Fundraising Event License", 4/07,[(2/06)][*], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Public Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

TONY ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA HILL, Secretary
APPROVED BY AGENCY: April 10, 2007
FILED WITH LRC: April 12, 2007 at 2 p.m.
CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of

Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department Of Public Protection
Office Of Charitable Gaming
(As Amended at ARRS, July 9, 2007)

820 KAR 1:057. Accurate records.

RELATES TO: KRS 238 550(5), 238.560(2)
STATUTORY AUTHORITY: KRS 238.515(4), (9), 238.550(3)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238 515(4) and 238 550(5) authorize the office to establish and enforce standards for accounting, recordkeeping, and reporting to the office to ensure charitable gaming receipts are counted and reported. This administrative regulation establishes the minimum requirements for accurate records.

Section 1. Bank Account and Records. (1) A licensed charitable gaming organization shall maintain a single bank account for charitable gaming receipts. This account shall be separate from any other account maintained by the organization.

(2) Disbursements for charitable gaming expenses and charitable donations shall be made by check or electronic fund transfer directly from the charitable gaming account.

(3) All receipts from each gaming occasion shall be deposited by the second business day following the occasion at which they were received. The deposit for each occasion shall be made separately and shall not be combined with the deposit from any other occasion.

(4) All types of deposits, including startup cash, bad checks collected and check collection fees, progressive game carry forward, and adjusted gross receipts, shall be listed separately on the deposit reconciliation sheet, and the deposit slip, if possible. Each individual check shall be listed separately on the deposit slip. If a register tape is run listing the amounts of the individual checks, it may be attached to the deposit slip ~~[ticket]~~. Total cash and coins shall be listed separately. The organization shall keep a copy of the deposit slip ~~[ticket]~~

(5) Checks that have been returned for insufficient funds that have not been collected shall be retained by the organization for three (3) years following the close of the calendar year in which the check was issued. If the check has been turned over to someone else for collection, the organization shall keep a copy of the check with information regarding the person collecting the check.

(6) Monthly bank statements and reconciliations for all accounts shall be maintained for three (3) years following the close of a calendar year.

(7) Copies of the fronts and backs of checks from any account into which charitable gaming funds are deposited or transferred shall be provided to the office upon request.

(8) Gross receipts shall include the money received from the sale of raffle tickets, bingo cards or faces, pickle jars, bonanza balls, or hot balls card-minding devices, pulltabs, charity fundraising event games, special limited charity fundraising event games, bad check collections, credit card fees and reasonable check collection fees minus bad checks

Section 2. Start-up Cash. (1) If the source of start-up cash is not the charitable gaming account, the source of the start-up cash shall be identified on the gaming occasion sheet and signed by the chairperson.

(2) Start-up cash from one (1) organization shall not be commingled with the start-up cash from another organization. The start-up cash shall be identified on the check withdrawing the funds and on the deposit slip, if possible.

Section 3. Organization Records. (1) The chief financial officer shall be the custodian of the gaming records and shall be responsible for ensuring that the records are accurate, complete, and maintained regularly for inspection by the office.

(2) An organization that hand-writes data and later enters the information onto another form or computer program shall retain the hand-written records along with the other form or computer generated record.

(3) Organizations shall prepare and maintain accurate and adequate corporate or other organizational records including articles of incorporation, minutes of board of directors meetings, and resolutions.

(4) Organizations shall maintain detailed records of all expenditures made in furtherance of its charitable purpose, including all charitable contributions.

(5) All records shall be made available for inspection and audit at the request of the office.

(6) Any organization's records, or copies of those records, deemed necessary to complete an inspection, audit, or investigation may be retained by the office or its employees or agents. The office shall provide a written receipt of the records at the time of removal.

(7) Organizations shall provide records requested by the office, or any of its employees, within ten (10) calendar days, unless a longer response time is allowed by the request.

(8) An organization shall perform an inventory and obtain permission of the office before destroying a bulk amount of gaming supplies. The gaming supplies shall be destroyed by burning in compliance with state and federal law, shredding, destroying or defacing in some manner to prevent reuse of any pulltab, flare, prize board, seal card, bingo paper or any portion thereof.

(9) When an organization ceases to game, **the organization shall:**

(a) Perform a final inventory;

(b)1. Return all unused product to a distributor;

2. Donate the product to another organization with the permission of the office; or

3. Destroy the product with the permission of the office; and

(c) ~~[it]~~ ~~[they] [shall perform a final inventory and return all unused product to a distributor, donate the product to another organization with the permission of the office, or destroy the product with the permission of the office.~~

~~(10) When an organization ceases to game, it shall]~~ Spend or disburse the charitable gaming funds consistent with its charitable purpose.

TONY ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD CRESS, Deputy Secretary
For TERESA HILL, Secretary
APPROVED BY AGENCY: June 7, 2007
FILED WITH LRC: June 8, 2007 at 4 p.m.
CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department Of Public Protection
Office Of Charitable Gaming
(As Amended at ARRS, July 9, 2007)

820 KAR 1:058 Gaming occasion records.

RELATES TO: KRS 238 550
STATUTORY AUTHORITY: KRS 238.515(2), (4), (9), 238.550(3), (5), (6), (7), (8)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 238.500, 238 515, and 238.550 authorize the office to establish and enforce standards for accounting, recordkeeping and reporting to the office to ensure charitable gaming receipts are properly accounted for by the organizations. This administrative regulation establishes the minimum requirements for recordkeeping.

Section 1. General Provisions. (1) Each licensed charitable gaming organization shall prepare and maintain records for each gaming occasion. The gaming occasion records shall be prepared

or completed by a volunteer or chairperson of the organization. The gaming occasion records shall not be completed by a bookkeeper who is independently compensated for doing so.

(2) Gaming proceeds shall be counted by an officer or a chairperson and the count shall be verified. A count may be verified by a volunteer. [~~The name and signature of each person counting or verifying shall appear on the gaming occasion record.~~]

(3) A gaming occasion record shall contain:

(a) The date of the gaming occasion;

(b) The name and license number of the organization conducting the gaming occasion;

(c) The name and address of the donor of every donated prize whose fair market value is in excess of $500; and [~~The printed name and signature of the chairperson in charge of the gaming occasion;~~

~~(d) The name and signature of the person taking the deposit from the gaming occasion,~~

~~(e) The printed name and signature of the person making the deposit, if different from the person taking the deposit;~~

~~(f) The printed name and signature of the person in possession of the start-up cash, and the amount and source of the start-up cash;~~

~~(g) If any donated prizes are awarded during a gaming occasion, a notation of each prize that was donated and the fair market value. In addition, if any item with a fair market value in excess of $500 is donated, the notation for that item shall include the following information:~~

~~1. The date the item was received,~~

~~2. The date the item was awarded,~~

~~3. The name of the donor;~~

~~4. The street address, city, and state of the donor;~~

~~5. A description of the donated item; and~~

~~6. The fair market value of the donated item,~~]

(d) [~~(h)~~] A deposit reconciliation worksheet which records:

1. All currency, coins, checks, and credit card receipts available for deposit;

2. All profit or loss from each gaming activity, all start-up cash, all cash from incomplete pulltab sales, any progressive game carry forward, bad checks collected and check collection fees, and all other gaming receipts that should be available for deposit; [~~and~~]

3. Any variance between the amount of currency, coins, checks, and credit card receipts actually available for deposit, and the amount that should be available for deposit according to the gaming occasion records;

4. The amount of donations received at the gaming occasion which will be deposited into the general account;

5. The printed name and signature of the chairperson in charge of the gaming occasion;

6. The printed name and signature of the person taking the deposit from the gamin occasion;

7. The printed name and signature of the person making the deposit, if different from the person taking the deposit; and

8. The printed name and signature of the person in possession of the start-up cash, and the amount and source of the start-up cash, [~~and~~

~~(i) A copy of the gaming occasion program, which shall include a printed listing of all bingo products for sale and the price of each product and all bingo games played and the payout for each game.~~]

(4) [~~The organization shall complete Form CG-Vol for each gaming occasion and keep it with the gaming occasion record for that event.~~

~~(5)~~] If an organization offers coupons for bingo paper or a card-minding device, a voucher shall be completed when the coupon is redeemed and the coupon and the voucher shall be retained with the gaming occasion records.

(5) If an organization offers coupons for pulltabs, the type and number of pulltabs given away shall be recorded on the gaming occasion records and on CG-FIN Attachment C and D. The coupon shall be retained with the gaming occasion records.

(6) If the organization sells gift certificates for bingo paper or a card-minding device, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, a voucher shall be completed and the gift certificate and the voucher shall be retained with the gaming occasion records.

(7) If the organization sells gift certificates for pulltabs, the receipts for the sale shall be counted as gaming receipts on the day they are received. When the gift certificate is redeemed, the type and number of pulltabs given away shall be recorded on the gaming occasion records and on CG-FIN Attachment C and D. The gift certificate [~~the coupon~~] shall be retained with the gaming occasion records.

(8) All charitable gaming receipts and records shall be kept separate from noncharitable gaming receipts and records.

(9) [~~(8)~~] All gaming occasion records shall be retained by the organization for a period of three (3) years. Gaming occasion records shall be made available for inspection and audit by the office upon request.

(10) [~~(9)~~] Organizations shall provide records requested by the office, or any of its employees, within ten (10) calendar days unless a longer response time is allowed by the request.

Section 2. Bingo Paper Sale Records. [~~(1)~~] Bingo paper sale records shall contain the following information:

(1) [~~(a)~~] Attendance determined by headcount of number of people playing bingo;

(2) [~~(b)~~] Each type of bingo paper being sold;

(3) [~~(c)~~] The serial number of the set of each type of paper sold;

(4) [~~(d)~~] The number of each type of bingo paper given away with the voucher being redeemed attached to the gaming occasion records, if applicable;

(5) [~~(e)~~] Number of each type of bingo paper destroyed;

(6) [~~(f)~~] The number of each type of bingo paper sold;

(7) [~~(g)~~] The price of each type of bingo paper sold;

(8) [~~(h)~~] The number of pickle jar, bonanza ball, or hot ball games sold;

(9) [~~(i)~~] The price of pickle jar, bonanza ball, or hot ball games and whether the price is per person or per pack;

(10) [~~(j)~~] The number of player pick bingo games sold;

(11) [~~(k)~~] The price of each player pick bingo game sold;

(12) [~~(l)~~] The amount of money expected to be received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that occasion;

(13) [~~(m)~~] The amount of money actually received from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that occasion;

(14) [~~(n)~~] The cash short or cash over from the sale of bingo paper, player pick, and pickle jar, bonanza ball, or hot ball for that occasion; and

(15) [~~(o)~~] The sales report printed from the player pick machine that includes the number of games sold, price for each game, and the amount of money expected from the sale of player pick games for that gaming occasion; [~~and~~]

[~~(p) The printed name and signature of the person responsible for bingo paper sales at that gaming occasion.~~]

(16) Records of all carryover or cumulative bingo games played which [~~(2) Carryover or cumulative bingo game records~~] shall contain the following information:

(a) The name of each progressive bingo game in play;

(b) The amount carried over from the previous occasion;

(c) The receipts from the current occasion;

(d) The amount paid out for the current occasion; and

(e) The amount carried forward to the next occasion;[~~; and~~

~~(f) The printed name and signature of the person responsible for carryover or cumulative bingo game records at that occasion~~][-]

(17) A copy of the gaming occasion program, which shall include:

(a) The organization name and license number;

(b) A specific description [~~printed listing~~] of all bingo products for sale and the price of each product; and

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(18) Form CG-Vol.

Section 3 Bingo Payout Records. (1) Bingo payout records shall contain the following information:

(a)[(1)] A list of all bingo games that will be played at that gaming occasion;

(b)[(2)] Each pickle jar, bonanza ball, or hot ball game available to be awarded[, including the selected bingo ball associated with each];

(c)[(3)] The prize expected or available to be awarded for each bingo game and door prize;

(d)[(4)] The prize that was actually awarded for each bingo game and door prize;

(e)[(5)] A notation for the prize awarded for each bingo game and door prize, specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise, the cost of the merchandise and the fair market value of the merchandise;

(f)[(6)] If a voucher was issued for [pulltabs,] card-minding devices[,] or bingo paper, the fair market value of the [pulltabs,] card-minding devices[,] or bingo paper;

(g)[(7)] The total amount of all cash awarded for bingo prizes and door prizes;

(h)[(8)] The total amount of all checks issued as bingo prizes and door prizes;

(i)[(9)] The total cost and fair market value of all merchandise awarded for bingo prizes and door prizes;

(j)[(10)] A grand total of cash, checks, and fair market value of merchandise awarded for bingo prizes and door prizes, which shall not exceed $5,000; [and]

(k)[(11)] If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check; and

(l) The information required by subsections (2), (3), and (4) of this section, if applicable

(2)[(12)] If a pulltab is awarded as a bingo prize, the person in charge of bingo payouts shall purchase the pulltabs from the pulltab manager by transfer of cash from bingo payout to pulltab sales. It shall be recorded as a cash payout on the bingo payout session record and it shall be included as a gross receipt on the pulltab session record and on CG-FIN Attachment C and D.

(3)[(13)] If pulltabs are given away as a door prize, the amount given away shall:

(a) [Shall] Be included as a gross receipt on the pulltab session record and on CG-FIN Attachment C and D;

(b) [Shall] Be listed on the pulltab session record as given away;

(c) [Shall] Be included at fair market value on CG-FIN Attachment B to determine compliance with the $5,000 payout limit;

(d) [Shall] Be deducted from gross receipts on CG-FIN Attachment C and D; and

(e) [Shall] Not be listed as a purchased prize on CG-FIN Part 1 line 2.

(4)[(14)] If pulltabs are given away as a promotional item, the amount given away shall:

(a) [Shall] Be included as a gross receipt on the pulltab session record and on CG-FIN Attachment C and D;

(b) [Shall] Be listed on the pulltab session record as given away;

(c) [Shall] Be deducted from gross receipts on CG-FIN Attachment C and D; and

(d) [Shall] Not be listed as a purchased prize on CG-FIN Part 1 line 2. [; and

(12) The printed name and signature of the person responsible for bingo payouts during each gaming occasion]

Section 4. Card-minding Device Records. Card-minding device records shall contain the following information:

(1) The type of programs loaded, including the number of faces;

(2) The number of units rented for each type of program;

(3) The number of each type of card-minding device rental given away, with the redeemed voucher attached to the gaming occasion records;

(4) The number of units voided for each type of program;

(5) The price per unit for each type of program;

(6) The amount of money expected to be received from the rental of card-minding devices;

(7) The actual amount of money received from the rental of card-minding devices for that gaming occasion;

(8) The cash short or cash over from the rental of card-minding devices for that gaming occasion;

(9) The total sales activity report; [and]

(10) A copy of the gaming occasion program, which shall include:

(a) The organization name and license number;

(b) A specific description [printed listing] of all bingo products for sale and the price of each product; and

(c) All bingo games played and the payout and alternate payout, if any, for each game; and

(11) Form CG-Vol. [The printed name and signature of the person responsible for card-minding device rentals at that gaming occasion.]

Section 5. Pulltab Records. (1) [(1)] Pulltab records shall contain the following information for each session [game]:

(a)[(1)] [(a)] The name, serial number, and form number of all games played;

(b)[(2)] [(b)] The name of all progressive jackpot games in play during that gaming occasion;

(c)[(3)] [(c)] The ticket count for each pulltab game sold;

(d)[(4)] [(d)] The price for each ticket;

(e)[(5)] [(e)] The prize expected or available to be awarded for each pulltab game, including the progressive jackpot games;

(f)[(6)] [(f)] The name, serial number, form number, and quantity of pulltab tickets given away as a door prize or a promotional item[-] [prizes, excluding those pulltab games manufactured to payout in pulltabs instead of cash][. The redeemed voucher shall be attached to the gaming occasion records];

(g) If a pulltab is awarded as a pulltab prize, the information required by subsection (2) of this section;

(h) [(7) If a pulltab is awarded as a pulltab prize, the person in charge of pulltab payouts shall purchase the pulltabs from the deal being awarded as the prize by transfer of cash from the deal being sold to the deal being awarded as the prize. It shall be recorded as a cash payout for the deal being sold and it shall be included as a gross receipt for the deal being awarded as a pulltab prize and on CG-FIN Attachment C and D.] [(g)] [(8)] The prize that was actually awarded for each pulltab game, including the progressive jackpot games;

(i)[(9)][(8)] [(h)] A notation for the prize awarded for each pulltab game specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost [and fair market value of that merchandise];

(j)[(10)][(9)] [(i)] If a voucher was issued for [pulltabs,] card-minding devices[,] or bingo paper, the fair market value of the [pulltabs,] card-minding devices[,] or bingo paper;

(k)[(11)][(10)] [(j)] If a pulltab game was played in conjunction with a progressive jackpot game, as designed by the manufacturer, the amount contributed to the progressive jackpot;

(l)[(12)][(11)] [(k)] The cash short or cash over for each pulltab session [game];

(m)[(13)][(12)] [(l)] The total amount of all cash awarded for pulltab prizes;

(n)[(14)][(13)] [(m)] The total amount of all checks issued as pulltab prizes;

(o)[(15)][(14)] [(n) The total fair market value of all merchandise awarded for pulltab prizes;

(o)] The total cost of [amount of money paid for] all merchandise awarded for pulltab prizes;

(p)[(16)][(15)] [(p)] If a check from the organization's charitable gaming checking account was issued as a pulltab prize instead of cash, the number of the check;

(q)[(17)][(16)] [(q)] The total amount of money from any incomplete sale of pulltab games;

(r)[(18)][(17)] Records of any progressive pulltab games sold which [and

(r) The printed name and signature of the person responsible for the payouts during each gaming occasion.

(2) Progressive pulltab records] shall contain the following information:

1.[(a)] The name of each progressive pulltab jackpot game in

play;

2.[(b)] The amount carried over from the previous occasion;

3.[(c)] The receipts from the current occasion;

4.[(d)] The amount paid out for the current occasion;

5.[(e)] The amount carried forward to the next occasion;

6.[(f)] The serial number of all games that contributed to the prize pool; and

(s)[(19)][(18)] Form CG-Vol.

(2) If a pulltab is awarded as a pulltab prize, the person in charge of pulltab payouts shall purchase the pull tabs from the deal being awarded as the prize by transfer of cash from the deal being sold to the deal being awarded as the prize. It shall be recorded as a cash payout for the deal being sold and it shall be included as a gross receipt for the deal being awarded as a pulltab prize and on CG-FIN Attachment C and D. [~~(g) The printed name and signature of the person responsible for progressive pulltab games at that occasion.~~]

Section 6. Raffle Records. (1) If the raffle tickets sell for $100 or more, the [~~Except as provided in subsection (2) of this section,~~] raffle records shall contain the following information:

(a) The number of raffle tickets printed;

(b) The sales price for each ticket;

(c) The date raffle ticket sales began;

(d) The date the raffle drawing was held;

(e) A voided raffle ticket or copy of a raffle ticket;

(f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;

(g) The total amount of money collected for the raffle event;

(h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;

(i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event,

(j) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(k) A list of all raffle prizes awarded;

(l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost [~~and fair market value~~];

(m) The total amount of all cash awarded for raffle prizes;

(n) The total amount of all checks issued as raffle prizes;

(o) [~~The total fair market value of all merchandise awarded as raffle prizes;~~

~~(p)~~] If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;

(p) [~~(q)~~] Each winning ticket stub;

(q) [~~(r)~~] All unsold tickets; **and**

(r) [~~(s)~~] A list of all raffle expenses including a copy of all invoices supporting each expense[~~; and~~

~~(s)~~] [~~(t)~~] [~~The printed name and signature of the person responsible for the raffle event records~~].

(2) If the raffle tickets sell for fifty (50) dollars to $100, the raffle records shall contain the following information:

(a) The number of raffle tickets printed;

(b) The sales price for each ticket;

(c) The date raffle ticket sales began;

(d) The date the raffle drawing was held,

(e) A voided raffle ticket or copy of a raffle ticket;

(f) If tickets are given to volunteers to sell, a list of each volunteer's name with the total number of the tickets and ticket numbers given to them;

(g) The total amount of money collected for the raffle event;

(h) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event,

(i) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;

(j) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(k) A list of all raffle prizes awarded;

(l) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;

(m) The total amount of all cash awarded for raffle prizes;

(n) The total amount of all checks issued as raffle prizes;

(o) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;

(p) Each winning ticket stub; **and**

(q) A list of all raffle expenses including a copy of all invoices supporting each expense[~~; and~~

~~(r) The printed name and signature of the person responsible for the raffle event records~~].

(3) If the raffle tickets sell for more than one (1) dollar but less than fifty (50) dollars, the raffle records shall contain the following information:

(a) The number of raffle tickets printed;

(b) The sales price for each ticket;

(c) The date raffle ticket sales began;

(d) The date the raffle drawing was held;

(e) A voided raffle ticket or copy of a raffle ticket;

(f) The total amount of money collected for the raffle event;

(g) The total number of ticket stubs collected from the sale of all raffle tickets for the raffle event;

(h) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event;

(i) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(j) A list of all raffle prizes awarded;

(k) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost;

(l) The total amount of all cash awarded for raffle prizes;

(m) The total amount of all checks issued as raffle prizes;

(n) If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;

(o) Each winning ticket stub; **and**

(p) A list of all raffle expenses including a copy of all invoices supporting each expense[~~; and~~

~~(q) The printed name and signature of the person responsible for the raffle event records~~]

(4) If the raffle ticket sells for one (1) dollar or less, [~~is conducted pursuant to 820 KAR 1:050, Section 1(4),~~] the raffle records shall contain the following information:

(a) The beginning and ending serial number or ticket number for each roll of tickets sold or the beginning and ending number of the tickets printed,

(b) The quantity of tickets sold;

(c) The sales price of the tickets;

(d) The date of the raffle;

(e) The total amount of money collected for the raffle event;

(f) The total amount of money that should have been collected based on the number of ticket stubs collected for the raffle event,

(g) Total cash short or cash over amount from raffle ticket sales for the raffle event;

(h) A list of all raffle prizes awarded,

(i) A notation for the prize awarded for each raffle specifying whether the prize was cash, a check, or merchandise, and if merchandise, a description of that merchandise and the cost [~~and fair market value~~];

(j) The total amount of all cash awarded for raffle prizes;

(k) The total amount of all checks issued as raffle prizes;

(l) [~~The total fair market value of all merchandise awarded as raffle prizes,~~

~~(m)~~] If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;

(m) [~~(n)~~] Each winning ticket stub; **and**

(n) [~~(o)~~] A list of all raffle expenses, including a copy of all invoices supporting each expense[~~; and~~

~~(o)~~] [~~(p)~~] [~~The printed name and signature of the person responsible for the raffle event records~~]

Section 7. Charity Fundraising Event Records. (1) Charity fundraising event records for a festival or carnival shall contain the

following information:

(a) The name of each [type of] game of chance played;

(b) The price to play each [type of] game of chance;

(c) The adjusted gross receipts from the sale of each [amount of money received from the sale of each type of] game of chance;

(d) The grand total of adjusted gross receipts [money] received from the play [sale] of all games of chance;

(e) [The total amount of all cash awarded for each type of game of chance prize and door prize;

(f)] The total amount of all checks issued for each [type of] game of chance prize and door prize;

(f) [(g)] The total cost [and fair market value] of all merchandise awarded for each type of game of chance prize and door prize;

(g) [(h)] If a check from the organization's charitable gaming checking account was issued as a prize instead of cash, the number of the check;

(h) [(i)] If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records;

(i) [(j)] If pulltabs are sold, accurate pulltab records;

(j) [(k)] If a raffle is conducted, accurate raffle records; and

(k) [within the period of the charity fundraising event, a listing of the raffle as a type of game of chance along with other games of chance;

(l) If the charity fundraising event has a capital prize raffle for which sales were made outside the charity fundraising event period as well as during the charity fundraising event, accurate raffle records as required by Section 6 of this administrative regulation;

(m)] If the charity fundraising event continues for more than one (1) day, a summary of the required information for each day[; and

(l)] [(n)] [The printed name and signature of each person responsible for the gaming at the charity fundraising event].

(2) Special limited game records for a charity fundraising event shall contain:

(a) The name of each game to be played,

(b) The adjusted gross receipts for each game for each day of the charity fundraising event; and

(c) A list of all merchandise prizes awarded and the cost[; and

(d) The printed name and signature of each person responsible for special limited game records at a charity fundraising event].

Section 8. Special Limited Charity Fundraising Event Records. (1) Special limited charity fundraising event records shall contain the following information for special limited charitable games:

(a) The name of each game to be played;

(b) The quantity of scrip, chips, or imitation money the central bank started with prior to any sales, and the corresponding cash amount associated with each denomination of scrip, chips, or imitation money;

(c) The quantity of scrip, chips, or imitation money the central bank sold during the special limited charity fundraising event;

(d) The amount of money received by the central bank from the sale of scrip, chips, or imitation money;

(e) Cash short or cash over from the sale of scrip, chips, or imitation money;

(f) The quantity of scrip, chips, or imitation money collected by the central bank and redeemed for prizes;

(g) Prizes awarded by the central bank;

(h) A notation for prizes awarded specifying whether each prize was cash, check, or merchandise, and if merchandise, a description of that merchandise and the cost [and fair market value;

(i) The printed name and signature of each person of the person(s) responsible for special limited charity fundraising event records.]

(2) The amount of money corresponding to the scrip, chips, or imitation money collected by the central bank shall be compared to the sale of scrip, chips, or imitation money by the central bank at the conclusion of the special limited charity fundraising event. Any variance shall be documented and cash short or cash over shall be determined.

(3) For all tournaments played during special limited charity fundraising events, the special limited charity fundraising event records shall contain the following information in addition to the regular records required at special limited charity fundraising events:

(a) A record of attendance shall be kept for the special limited charitable games; and

(b) A copy of the gaming occasion program, which shall include the:

1. Organization name and license number;

2. Cost to enter, the cost of the buy backs, and the cost of the add ons;

3. Rules of the game;[.]

4. Manner for raising blinds or closing tables;[.] and

5. Prizes. The prizes may be listed as a percentage of the receipts. [The cost to enter, the cost of the buy backs, the rules of the game, the manner for raising blinds or closing tables, and the prizes shall be listed on the gaming occasion program. The prizes may be listed as a percentage of the receipts.]

(4) If bingo games are conducted, accurate bingo paper sale records, card-minding device records, and bingo payout records shall be maintained.

(5) If pulltabs are sold, accurate pulltab records shall be maintained.

(6) If raffles are [Raffles] conducted at a special limited charity fundraising event, accurate raffle records shall be maintained [shall be accounted for in the following manner:

(a) If a raffle is conducted within the period of the special limited charity fundraising event, a record of raffle receipts and payouts shall be listed on the special limited charity fundraising event gaming occasion record; and

(b) If the special limited charity fundraising event has a capital prize raffle for which sales were made outside the special limited charity fundraising event period, as well as during the special limited charity fundraising event, accurate raffle records shall be maintained according to Section 6 of this administrative regulation].

(7) The organization shall complete Form CG-Vol and keep it with the gaming occasion record for that event.

Section 9. Incorporation by Reference. (1) Form CG-Vol, "Charitable Gaming Volunteer Sign Up Sheet", 4/07,[(2/06)][*] is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Charitable Gaming, Environmental and Protection Cabinet, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

TONY ROYALTY, Executive Director
TIMOTHY LEDONNE, Commissioner
LLOYD CRESS, Deputy Secretary
For TERESA HILL, Secretary
APPROVED BY AGENCY: June 7, 2007
FILED WITH LRC: June 8, 2007 at 4 p.m.
CONTACT PERSON: Leah Cooper Boggs, Assistant Director of Licensing, Division of Licensing and Compliance, Office of Charitable Gaming, 132 Brighton Park Boulevard, Frankfort, Kentucky 40601, phone (502) 573-5528, fax (502) 573-6625

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need
(As Amended at ARRS, July 9, 2007)

900 KAR 6:050. Certificate of Need administrative regulation.

RELATES TO: KRS 216B.010-216B.130, 216B.330-216B.339, 216B.455, 216B.990

STATUTORY AUTHORITY: KRS 194A.030, 194A.050, 216B.040(2)(a)1, 216B.330

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)1 requires the Cabinet for Health and Family Services to administer Kentucky's Certificate of Need Program and to promulgate administrative regulations as necessary for the program. This administrative regulation establishes the requirements

necessary for the orderly administration of the Certificate of Need Program.

Section 1. Definitions. (1) "Administrative escalation" means an approval from the cabinet to increase the capital expenditure authorized on a previously issued certificate of need.

(2) "Cabinet" means the Cabinet for Health and Family Services.

(3) "Certificate of Need Newsletter" means the monthly newsletter that is published by the cabinet regarding certificate of need matters and is available on the Certificate of Need Web site at http://chfs.ky.gov/ohp/con.

(4) "Days" means calendar days, unless otherwise specified.

(5) "Emergency circumstances" means situations that pose an imminent threat to the life, health, or safety of a citizen of the Commonwealth.

(6) "Formal review" means the review of applications for certificate of need which are reviewed within ninety (90) days from the commencement of the review as provided by KRS 216B.062(1) and which are reviewed for compliance with the review criteria set forth at KRS 216B.040 and Section 6 of this administrative regulation.

(7) "Improvement" means change or addition to the premises of an existing facility that enhances its ability to deliver the services that it is authorized to offer under its existing license or an approved certificate of need.

(8) "Industrial ambulance service" means a Class I specialized provider licensed by the cabinet to serve the employees, customers, or patrons of a business, race track, recreational facility or similar organization excluding a health care facility.

(9) "Long-term care beds" means nursing home beds, intermediate care beds, skilled nursing beds, nursing facility beds, [~~personal care beds,~~] and Alzheimer nursing home beds.

(10) "Nonsubstantive review" is defined by KRS 216B.015(17).

(11) "Office of Inspector General" means the office within the Cabinet for Health and Family Services that is responsible for licensing and regulatory functions of health facilities and services.

(12) "Office or clinic" means the physical location at which health care services are provided.

(13) "Owner" means a person as defined in KRS 216B 015(21) who is applying for the certificate of need and will become the licensee of the proposed health service or facility.

(14) "Practice" means the individual, entity, or group that proposes to provide health care services and shall include the owners and operators of an office or clinic.

(15) "Primarily" means a simple majority or something that occurs at least fifty-one (51) percent of the time.

(16) "Proposed service area" means the geographic area the applicant proposes to serve.

(17) "Public information channels" means the Division of Communications in the Cabinet for Health and Family Services.

(18) "Public notice" means notice given through:

(a) Public information channels; or

(b) The cabinet's Certificate of Need Newsletter.

(19) "Qualified academic medical center" means:

(a) An institution of higher education which operates an accredited medical school within the Commonwealth of Kentucky;

(b) An institution, organization, or other entity which directly or indirectly owns or is under common control or ownership **with** [~~which~~] an accredited medical school operated within the Commonwealth of Kentucky; or

(c) An individual, organization, entity, or other person which is qualified under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) as a result of supporting or operating in support of an institution, organization, entity, or other person of a type or types referenced in paragraphs (a) or (b) of this subsection.

(20) "Secretary" means the Secretary of the Cabinet for Health and Family Services.

(21) "Show cause hearing" means a hearing during which it is determined whether a person or entity has violated provisions of KRS Chapter 216B.

Section 2. Letter of Intent. (1) The Certificate of Need Letter of Intent (Form #1) shall be filed with the cabinet by all applicants for a certificate of need. This shall:

(a) Include those applicants requesting nonsubstantive review under the provisions of Section 8 of this administrative regulation; and

(b) Not include those applicants requesting nonsubstantive review under the provisions of KRS 216B 095(3)(a) through (e).

(2) Upon receipt of a letter of intent, the cabinet shall provide the sender with written acknowledgment of receipt of the letter and shall publish notice of the receipt in the next published certificate of need newsletter.

(3) An application for a certificate of need shall not be processed until the letter of intent has been on file with the cabinet for thirty (30) days.

Section 3. Certificate of Need Application. (1) An applicant for a certificate of need shall file an application with the cabinet on the appropriate Certificate of Need Application (forms 2A, 2B or 2C).

(2) When filing an application for certificate of need, the applicant shall file an original and one (1) copy of the appropriate certificate of need application, together with the prescribed fee set forth in 900 KAR 6:020 with the cabinet on or before the deadlines established by Section 4 of this administrative regulation.

(3) Formal or nonsubstantive review of an application for a certificate of need shall not begin until the application has been deemed complete by the cabinet.

(4) The cabinet shall not deem an application complete unless:

(a) The applicant has provided the cabinet with all of the information necessary to complete the application; or

(b) The applicant has declined to submit the requested information and has requested that its application be reviewed as submitted.

(5) Once an application has been declared complete, the applicant shall not submit additional information regarding the application unless the information is introduced at a public hearing.

(6) Once an application has been declared complete, it shall not be amended to:

(a) Increase the scope of the project;

(b) Increase the amount of the capital expenditure;

(c) Expand the size of the proposed service area;

(d) Change the location of the health facility or health service; or

(e) Change the owner, unless the application involves a licensed health facility and a change of ownership with appropriate notice has occurred after the application was submitted.

(7) An application that has been declared complete may be amended at a public hearing to:

(a) Decrease the scope of the project;

(b) Decrease the amount of the capital expenditure; or

(c) Decrease the proposed service area.

(8) Applicants who have had proposals for certificates of need approved under the nonsubstantive review provisions of Section 8 of this administrative regulation may request the cabinet to change the specific location to be designated on the certificate of need if:

(a) The facility has not yet been licensed;

(b)The location is within the county listed on the certificate of need application; and

(c) The applicant files a written request with the cabinet within 180 days of the date of issuance of the certificate of need. A request shall include the reason why the change is necessary.

(9) If an application is not filed with the cabinet within one (1) year of the date of the filing of a letter of intent, the letter of intent shall expire, and the applicant shall file a new letter of intent at least thirty (30) days prior to submitting an application.

(10) If an application is withdrawn, the applicant shall file a new letter of intent at least thirty (30) days prior to resubmitting an application.

(11) An application that is not declared complete within one (1) year from the date that it is filed shall expire and shall not be placed on public notice or reviewed for approval.

Section 4. Timetable for Submission of Applications. (1) The cabinet's timetable for giving public notice for applications deemed complete for formal review and for applications granted nonsubstantive review status pursuant to KRS 216B.095(3)(f) and Section

8 of this administrative regulation shall be as follows:

(a) Public notice for organ transplantation, magnetic resonance imaging, megavoltage radiation equipment, cardiac catheterization, open heart surgery, positron emission tomography equipment and new technological developments shall be given on the third Thursday of the following months:

1. January; and
2. July.

(b) Public notice for residential hospice facilities, hospice agencies and home health agencies shall be given on the third Thursday of the following months:

1. February; and
2. August.

(c) Public notice for ground ambulance providers, private duty nursing services, mobile services and rehabilitation agencies shall be given on the third Thursday of the following months:

1. March; and
2. September.

(d) Public notice for day health care programs, prescribed pediatric extended care facilities and personal care beds shall be given on the third Thursday of the following months:

1. April; and
2. October.

(e) Public notice for acute care hospital beds, psychiatric hospital beds, special care neonatal beds, comprehensive physical rehabilitation beds, chemical dependency beds, ambulatory care centers, freestanding ambulatory surgical centers, outpatient health care centers [~~primary care centers with outpatient diagnostic and surgical services~~], and birthing centers shall be given on the third Thursday of the following months:

1. May; and
2. November.

(f) Public notice for long-term care beds and acute care hospitals including all other State Health Plan-covered services to be provided within the proposed acute care hospital shall be given on the third Thursday of November.

(g) Public notice for intermediate care beds for mental retardation and developmentally disabled facilities and psychiatric residential treatment facilities (PRTF) shall be given on the third Thursday of the following months:

1. June; and
2. December.

(h) A proposal not included in paragraphs (a) through (g) of this subsection shall be placed in the cycle that the cabinet determines to be most appropriate.

(2) In order to have an application deemed complete and placed on public notice, an application shall be filed with the cabinet at least fifty (50) days prior to the date of the desired public notice.

Section 5. Certificate of Need Review. (1) Prior to being reviewed for the approval or denial of a certificate of need, all applications for certificate of need shall be reviewed for completeness pursuant to Section 6 of this administrative regulation.

(2) Unless granted nonsubstantive review status, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the formal review criteria set forth at Section 7 of this administrative regulation.

(3) If granted nonsubstantive review status under Section 8 of this administrative regulation, an application for a certificate of need shall be reviewed for approval or denial of the certificate of need according to the nonsubstantive review criteria set forth at Section 8 of this administrative regulation.

Section 6. Completeness Review. (1) Fifteen (15) days after the deadline for filing an application in the next appropriate batching cycle, the cabinet shall conduct an initial completeness review to determine whether the application is complete for applications for both formal review and nonsubstantive review requested pursuant to Section 8 of this administrative regulation. Applications for which nonsubstantive review status has been requested pursuant to KRS 216B.095(3)(a) through (e) shall be reviewed within fifteen (15) days of receipt.

(2) If the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(3) If the cabinet finds that the application for nonsubstantive review is complete, the cabinet shall notify the applicant in writing that the application has been deemed complete and that review of the application for the approval or denial of a certificate of need shall begin upon public notice being given.

(4) A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date the applicant is notified that the application has been deemed complete.

(5) The cabinet shall give public notice for applications granted nonsubstantive review status under Section 8 of this administrative regulation in the next appropriate certificate of need newsletter that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(6) A determination that an application is complete shall:

(a) Indicate that the applicant has minimally responded to the necessary items on the application;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval of a certificate of need.

(7) If the cabinet finds that the application is incomplete, the cabinet shall:

(a) Provide the applicant with written notice of the information necessary to complete the application; and

(b) Notify the applicant that the cabinet shall not deem the application complete unless within fifteen (15) days of the date of the cabinet's request for additional information:

1. The applicant submits the information necessary to complete the application by the date specified in the request, or
2. The applicant requests in writing that the cabinet review its application as submitted.

(8) If, upon the receipt of the additional information requested, the cabinet finds that the application for formal review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application for formal review has been deemed complete; and
2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and

(b) Give public notice in the next appropriate certificate of need newsletter that review of the application for approval or denial of a certificate of need has begun.

(9) If, upon the receipt of the additional information requested, the cabinet finds that an application for nonsubstantive review is complete, the cabinet shall:

(a) Notify the applicant in writing that:

1. The application has been deemed complete;
2. Review of the application for the approval or denial of a certificate of need shall begin upon public notice being given; and
3. A decision to grant or deny nonsubstantive review status shall be made within ten (10) days of the date that the application was deemed complete; and

(b) Give public notice in the next appropriate certificate of need newsletter for applications granted nonsubstantive review status under Section 8 of this administrative regulation, that status has been granted and that review of the application for approval or denial of a certificate of need has begun. Public notice for applications granted nonsubstantive review status according to KRS 216B.095(3)(a) through (e) shall be mailed to affected persons.

(10) If the application **is incomplete**, or if the information submitted[,] is insufficient to complete the application, the cabinet shall:

(a) Request the information necessary to complete the applica-

tion; and

(b) Inform the applicant that the application shall not be deemed complete and shall not be placed on public notice until:

1. The applicant submits the information necessary to complete the application; or

2. The applicant requests in writing that its application be reviewed as submitted.

(11) Once an application has been deemed complete, an applicant shall not submit additional information to be made part of the public record unless:

(a) The information is introduced at a hearing; or

(b) In the case of a deferred application, the additional information is submitted at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(12) A determination that an application is complete shall:

(a) Indicate that the application is sufficiently complete to be reviewed for approval or disapproval;

(b) Not be determinative of the accuracy of, or weight to be given to, the information contained in the application; and

(c) Not imply that the application has met the review criteria for approval.

Section 7. Considerations for Formal Review. In determining whether to approve or deny a certificate of need, the cabinet's review of applications under formal review shall be limited to the following considerations:

(1) Consistency with plans.

(a) To be approved, a proposal shall be consistent with the State Health Plan established in 900 KAR 5:020.

(b) In determining whether an application is consistent with the State Health Plan, the cabinet shall apply the latest inventories and need analysis figures maintained by the cabinet and the version of the State Health Plan in effect at the time of the cabinet's decision.

(c) An application seeking to reestablish a licensed healthcare, facility, or service, which was provided at the healthcare facility and which was voluntarily discontinued by the applicant, shall be considered consistent with the State Health Plan under the following circumstances:

1. The termination or voluntary closure of the former healthcare service or facility:

a. Was not the result of an order or directive by the cabinet, governmental agency, judicial body, or other regulatory authority;

b. Did not occur during or after an investigation by the cabinet, governmental agency, or other regulatory authority;

c. Did occur while the facility was in substantial compliance with applicable administrative regulations and was otherwise eligible for relicensure;

d. Was not an express condition of any subsequent Certificate of Need approval; and

e. Did not occur less than twenty-four (24) months prior to the submission of the application to reestablish;

2. The proposed healthcare service shall be provided within the same service area as the former healthcare service;

3. The proposed healthcare facility shall be located within the same county as the former healthcare facility and at a single location; and

4. The application shall not seek to reestablish any type of bed utilized in the care and treatment of patients for more than twenty-three (23) consecutive hours.

(2) Need. The cabinet shall determine:

(a) If the applicant has identified a need for the proposal in the geographic area defined in the application; and

(b) If the applicant has demonstrated that it is able to meet the need identified in the geographic area defined in the application.

(3) Accessibility. The cabinet shall determine if the health facility or health service proposed in the application will be accessible in terms of timeliness, amount, duration, and personnel sufficient to provide the services proposed.

(4) Interrelationships and linkages. The cabinet shall determine:

(a) If the proposal shall serve to accomplish appropriate and effective linkages with other services, facilities, and elements of the health care system in the region and state; and

(b) If the proposal is accompanied by assurance of effort to achieve comprehensive care, proper utilization of services, and efficient functioning of the health care system.

(5) Costs, economic feasibility, and resource availability. The cabinet shall determine:

(a) If it is economically feasible for the applicant to implement and operate the proposal; and

(b) If applicable, if the cost of alternative ways of meeting the need identified in the geographic area defined in the application would be a more effective and economical use of resources.

(6) Quality of services. The cabinet shall determine:

(a) If the applicant is prepared to and capable of undertaking and carrying out the responsibilities involved in the proposal in a manner consistent with appropriate standards and requirements established by the cabinet; and

(b) Whether the applicant has the ability to comply with applicable licensure requirements. The fact that there is not an applicable licensure category shall not constitute grounds for disapproving an application.

Section 8. Nonsubstantive Review. (1) The cabinet may grant nonsubstantive review status to applications to change the location of a proposed health facility or to relocate a licensed health facility only if:

(a)1. There is no substantial change in health services or bed capacity; and

2. The change of location or relocation is within the same county; or

(b) The change of location for a psychiatric residential treatment facility is within the same district as defined in KRS 216B.455 and is to the same campus as a licensed psychiatric residential treatment facility.

(2) In addition to the projects specified in KRS 216B.095(3)(a) through (e) pursuant to KRS 216B.095(f), the Division of Certificate of Need may grant nonsubstantive review status to an application for which a certificate of need is required if:

(a) The proposal involves the establishment or expansion of a health facility or health service for which there is not a component in the State Health Plan;

(b) The proposal involves an application from a hospital to reestablish the number of acute care beds that it converted to nursing facility beds pursuant to KRS 216B.020(4), if the number of nursing facility beds so converted are delicensed;

(c) The proposal involves an application to relocate nursing facility beds from one long term care facility to another long term care facility and the requirements established in this paragraph are met.

1. If the relocation takes place within the same county, the following restrictions shall apply:

a. The application shall be filed on or before September 28, 2005; and

b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application.

2. If the relocation is to be from one county to another county, the following restrictions shall apply:

a. The letter of intent shall be filed no later than August 29, 2005 and the application shall be filed no later than September 28, 2005;

b. The application shall be accompanied by a properly completed notice of intent to acquire (form #9), and by evidence of the selling facility's binding commitment to sell upon approval of the application;

c. The selling facility shall be located in a county that had a nursing facility bed occupancy rate of less than ninety-five (95) percent (rounded up to the next whole number if ninety-four and five-tenths (94.5) percent or greater and rounded down to the next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report,

d. The acquired beds shall only be relocated to a county whose nursing facility bed occupancy was ninety-five (95) percent or greater (rounded up to the next whole number if ninety-four and five-tenths (94 5) percent[)] or greater and rounded down to the

next whole number if less than ninety-four and five-tenths (94.5) percent) according to the latest published version of the Kentucky Annual Long Term Care Services Report; and

e. A long term care facility shall not sell or acquire more than ten (10) of its licensed nursing facility beds;

(d) ~~[The proposal involves an application by an existing licensed hospital to add to its existing acute care bed inventory, and the requirements established in this paragraph are met.~~

~~1. The hospital had not previously filed an application which was granted nonsubstantive review status pursuant to this paragraph.] [The letter of intent shall be filed no later than August 27, 2007, and the application shall be filed no later than September 26, 2007.]~~

~~[2. The application proposes to increase the hospital's existing licensed acute care bed inventory by no more than twenty (20) percent; and~~

~~3. The hospital's acute non-psychiatric inpatient occupancy rate was seventy (70) percent or greater (rounded up to the next whole number) according each of the two (2) most recently published versions of the Kentucky Annual Hospital Utilization and Services Report][, and~~

~~4. The hospital documents that during each of the two (2) previous calendar years, at least twenty (20) percent of its acute nonpsychiatric inpatient hospital admissions originated from counties not included in the hospital's area development district, as created and established pursuant to KRS 147A.050]. [The proposal involves an application to establish no more than thirty (30) nursing facility beds at a dual licensed pediatric facility as defined in 907 KAR 1:032, Section 1;]~~

[~~(e)~~]1. The proposal involves an application to relocate or transfer licensed acute care beds, not including neonatal Level III beds, from one (1) existing licensed hospital to another existing licensed hospital within the same area development district; and

a. There is no increase in the total number of licensed acute care beds in that area development district; and

b. The hospital from which the beds are relocated delicenses those beds; and

2. If neonatal Level II beds are relocated or transferred pursuant to this subsection:

a. The receiving hospital shall have an existing licensed Level II or Level III neonatal unit;

b. A minimum of four (4) beds shall be relocated; and

c. The relocation shall not leave the transferring hospital with less than four (4) neonatal Level II beds unless the relocated beds represent all of its neonatal Level II beds;

[**(e)**][~~(f)~~] The proposal involves an application by an existing licensed hospital to:

1. Convert licensed psychiatric or chemical dependency beds to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Convert and implement the beds on-site at the hospital's existing licensed facility; and

3. Delicense the same number of psychiatric or chemical dependency beds that are converted; or

[**(f)**][~~(g)~~] The proposal involves an application by an existing licensed hospital providing inpatient psychiatric treatment to:

1. Convert psychiatric beds licensed for use with geriatric patients to acute care beds, not including special purpose acute care beds such as neonatal Level II beds or neonatal Level III beds;

2. Implement the beds on-site at the existing licensed hospital; and

3. Delicense the same number of converted beds.

(3) If an application is denied nonsubstantive review status by the Division of Certificate of Need, the application shall automatically be placed in the formal review process.

(4) If an application is granted nonsubstantive review status by the Division of Certificate of Need, notice of the decision to grant nonsubstantive review status shall be given to the applicant and all known affected persons.

(5) If an application is granted nonsubstantive review status by the Division of Certificate of Need, any affected person who believes that the applicant is not entitled to nonsubstantive review status or who believes that the application should not be approved may request a hearing by filing a request for a hearing within ten (10) days of the notice of the decision to conduct nonsubstantive review. The provisions of Section 16 of this administrative regulation shall govern the conduct of all nonsubstantive review hearings. Nonsubstantive review applications shall not be comparatively reviewed but may be consolidated for hearing purposes.

(6) If an application for certificate of need is granted nonsubstantive review status by the Division of Certificate of Need, there shall be a presumption that the facility or service is needed and applications granted nonsubstantive review status by the Division of Certificate of Need shall not be reviewed for consistency with the State Health Plan.

(7) The cabinet shall approve applications for certificates of need that have been granted nonsubstantive review status by the Division of Certificate of Need if:

(a) The application does not propose a capital expenditure, or

(b) The application does propose a capital expenditure and the cabinet finds that the facility or service with respect to which the capital expenditure is proposed to be made is required. The cabinet shall find that the facility or service with respect to which the capital expenditure is proposed to be made is required, unless the cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(8) The cabinet shall disapprove applications for certificates of need that have been granted nonsubstantive review if:

(a) The cabinet finds that the applicant is not entitled to nonsubstantive review status; or

(b) The cabinet finds that the presumption of need provided for in subsection (6) of this section has been rebutted by clear and convincing evidence by an affected party.

(9) The cabinet shall approve or disapprove an application which has been granted nonsubstantive review status by the Division of Certificate of Need within thirty-five (35) days of the date that public notice is given that nonsubstantive review status has been granted.

(10) If a certificate of need is denied following nonsubstantive review, the applicant may:

(a) Request that the cabinet reconsider its decision pursuant to KRS 216B.090 and Section 17 of this administrative regulation;

(b) Request that the application be placed in the next cycle of the formal review process; or

(c) Seek judicial review pursuant to KRS 216B.115.

Section 9. Notice of Decision. (1) The cabinet shall notify the applicant and any party to the proceeding of the final action on a certificate of need application.

(2) Notification of approval shall be in writing and shall include:

(a) Verification that the review criteria for approval have been met;

(b) Specification of any terms or conditions limiting a certificate of need approval, including limitations regarding certain services or patients. This specification shall be listed on the facility or service's certificate of need and license;

(c) Notice of appeal rights; and

(d) The amount of capital expenditure authorized, if applicable.

(3) Written notification of disapproval shall include:

(a) The reason for the disapproval; and

(b) Notice of appeal rights.

(4) An application for certificate of need that is disapproved shall not be refiled for a period of twelve (12) months from the original date of filing, absent a showing of a significant change in circumstances.

Section 10. Deferral of an Application. (1) An applicant may defer review of an application by notifying the cabinet in writing of its intent to defer review.

(a) If the application has been granted nonsubstantive review status, the notice to defer shall be filed no later than five (5) days prior to the date that the decision is due on the application unless a hearing has been scheduled. If a hearing has been scheduled, the notice to defer shall be filed no later than six (6) days prior to the date of the hearing.

(b) If the application is being reviewed under formal review, the notice to defer shall be filed no later than ten (10) days prior to the

date that the decision is due on the application unless a hearing has been scheduled If a hearing has been scheduled, the notice to defer shall be filed eight (8) days prior to the date of the hearing.

(c) If a hearing has been scheduled, the applicant shall also notify all parties to the proceedings in writing of the applicant's intent to defer the application.

(2) If deferral is requested, the application shall be deferred to the next regular batching cycle and shall be placed on public notice pursuant to the timetables set forth at Section 4 of this administrative regulation.

(3) If an application is deferred, an applicant may update its application by providing additional information to the cabinet at least twenty (20) days prior to the date that the deferred application is placed on public notice.

(4) In order for a hearing to be held on a deferred application, a hearing shall be requested by either the applicant or an affected person [~~if the application is subject to formal review, or an affected person if the application has been granted nonsubstantive review,~~] within:

(a) Ten (10) days of the deferred application being placed on public notice if the application has been granted nonsubstantive review status; or

(b) Fifteen (15) days of the deferred application being placed on public notice if the application is being reviewed under the provision of formal review.

Section 11. Withdrawal of an Application. (1) An applicant may withdraw an application for certificate of need prior to the entry of a decision to deny or approve the application by notifying the cabinet in writing of the decision to withdraw the application.

(2) If a hearing has been scheduled or held on the application, the applicant shall also notify all parties to the proceedings in writing of the applicant's decision to withdraw the application.

Section 12. Emergency Circumstances. (1) If an emergency circumstance arises, a person may proceed to alleviate the emergency without first obtaining a certificate of need if:

(a)1. The person is not a hospital, and the person is licensed by the appropriate Kentucky licensing authority to provide the service necessary to alleviate the emergency; or

2. The person is a hospital, and the hospital has an already-issued certificate of need to provide the service necessary to alleviate the emergency;

(b) The Division of Certificate of Need is notified in writing within five (5) days of the commencement of the provision of the service required to alleviate the emergency; and

(c) The Division of Certificate of Need acknowledges in writing that it recognizes that an emergency does exist.

(2) The notice to the Division of Certificate of Need shall be accompanied by an affidavit and other documentation from the person proposing to provide emergency services, which shall contain the following information:

(a) A detailed description of the emergency which shall include at least the following information:

1. A description of health care services that will be provided to the person or persons to whom the services will be provided, including proof of eligibility for the service;

2. A list of the providers in the county licensed to provide the services that will be provided during the emergency; and

3. Proof that:

a. Other providers licensed in the service area to provide the service are aware of the need for the service to be provided to the person and have refused or are unable to provide the service; or

b. Circumstances exist under which the transfer of a patient to another provider licensed in the service area to provide the service would present an unacceptable risk to a patient's life, health, or safety;

(b) The steps taken to alleviate the emergency;

(c) The location or geographic area where the emergency service is being provided; and

(d) The expected duration of the emergency.

(3) The Division of Certificate of Need may request additional information necessary to make its determination from the person proposing to provide emergency services before it acknowledges that an emergency does exist.

(4) If the provision of service to meet the emergency circumstance is required to continue beyond thirty (30) days from the date that the notice is filed with the cabinet, the person providing the emergency service shall file an application for a certificate of need for the next appropriate public notice pursuant to Section 4 of this administrative regulation.

(5) The person providing the emergency service may continue to alleviate the emergency circumstances without a certificate of need until:

(a) The emergency ceases to exist; or

(b) The cabinet issues a final decision to approve or disapprove the application for certificate of need

[~~(6) Once a Certificate of Need is issued, it shall be issued for the limited purpose of alleviating the emergency and shall remain in effect until the emergency ceases to exist. An emergency shall cease to exist if the person or persons to whom the service is being rendered no longer require the service or an existing or new provider becomes licensed or certified to provide the service for which the emergency has been declared and provides notice to the Division of Certificate of Need and the Office of Inspector General that it can meet the needs of the person or persons for whom the emergency service is being provided.~~

~~(7) When the emergency circumstance ceases to exist, the CON holder shall notify the Division of Certificate of Need that it is no longer providing the service and the Division of Certificate of Need shall notify the Office of Inspector General that the emergency no longer exists.~~

~~(8) The Office of Inspector General shall revoke the license of the emergency certificate of need holder upon notification of revocation by the Division of Certificate of Need.~~]

Section 13. Transfers of Certificates of Need (1) Certificates of need issued to an existing facility for purposes other than replacement of the facility may be transferred to the new owner of the facility if the change of ownership occurs prior to implementation of the project for which the certificate of need was issued.

(2) The purchase of all capital stock or a controlling interest of capital stock of a person who is the holder of an approved certificate of need for the establishment of a new health facility shall not constitute the sale, trade or transfer of a certificate of need to another person for purposes of KRS 216B.061(1)(h) and 216B.0615.

Section 14. Location of New and Replacement Facilities. A certificate of need approved for the establishment of a new facility or the replacement of an existing facility shall be valid only for the location stated on the certificate.

Section 15. Filings. (1) The filing of all documents required by this administrative regulation shall be made by filing the documents with the Division of Certificate of Need, HS1E-D, 1st Floor, Health Services Building, 275 East Main Street, Frankfort, Kentucky 40621 on or before 4:30 p m. eastern time on the due date.

(2) Filings of documents, other than certificate of need applications and proposed hearing reports, may be made by facsimile transmission if.

(a) The documents are received by the cabinet by facsimile transmission on or before 4:30 p m. eastern time on the date due; and

(b) An original document is filed with the cabinet on or before 4:30 p.m eastern time on the next business day after the due date.

(3) Failure to file documents in accordance with the schedule and manner provided in subsections (1) and (2) of this section shall result in the materials being returned to the sender and the cabinet shall not take additional action until the material is properly resubmitted.

(4) The Division of Certificate of Need shall endorse by file stamp the date that each filing is received and the endorsement shall constitute the filing of the document.

(5) In computing any period of time prescribed by this administrative regulation, the date of notice, decision or order shall not be included.

(6) The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or legal state holiday, in which

event the period shall run until 4.30 p.m. eastern time of the first business day following the Saturday, Sunday, or legal state holiday.

Section 16. Hearings (1) ~~[Health facilities established without a certificate of need pursuant to KRS 216B 020(2)(a) shall not be considered affected persons for purposes of KRS 216B 085 and shall not have the right to request a public hearing pursuant to KRS 216B 085.~~

~~(2)~~] Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

~~(2)~~][~~(3)~~] The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing.

~~(3)~~][~~(4)~~] Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of the hearing;

(b) Published in the CON newsletter if applicable; and

(c) Provided to members of the general public through public information channels.

~~(4)~~][~~(5)~~] A public hearing shall be canceled if the person or persons who requested the hearing withdraws the request by giving written notification to the Office of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

~~(5)~~][~~(6)~~] Any dispositive motion made by a party to the proceedings shall be filed with the hearing officer at least three (3) working days prior to the scheduled date of the hearing.

~~(6)~~][~~(7)~~] The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing, and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference; or

2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who will [shall] participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

~~(7)~~][~~(8)~~] At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #3;

(b) Witness List, Form #4; and

(c) Exhibit List, Form #5 and attached exhibits.

~~(8)~~][~~(9)~~](a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new Notice of Appearance, Form #3, and

2. Either:

a. Incorporate previously-filed witness lists (Form #4) and exhibit lists (Form #5); or

b. File amended Forms #4 and #5.

(b) A new party to the hearings shall file original Forms #3, #4 and #5.

(c) Forms shall be filed in accordance with subsection (7) [~~(8)~~] of this section.

~~(9)~~][~~(10)~~] The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

~~(10)~~][~~(11)~~] Each party shall have the opportunity to:

(a) Present its case;

(b) Make opening statements;

(c) Call and examine witnesses;

(d) Offer documentary evidence into the record;

(e) Make closing statements; and

(f) Cross-examine opposing witnesses on:

1. Matters covered in direct examination, and

2. At the discretion of the hearing officer, other matters relevant to the issues.

~~(11)~~][~~(12)~~] A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

~~(12)~~][~~(13)~~] The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed;

(b) Act to exclude irrelevant, immaterial or unduly repetitious evidence; and

(c) Question any party or witness.

~~(13)~~][~~(14)~~] The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed[,] at the discretion of the hearing officer.

~~(14)~~][~~(15)~~] The hearing officer shall have discretion to designate the order of presentation of evidence and the burden of proof as to persuasion.

~~(15)~~][~~(16)~~] Witnesses shall be examined under oath or affirmation.

~~(16)~~][~~(17)~~] Witnesses may, at the discretion of the hearing officer:

(a) Appear through deposition or in person; and

(b) Provide written testimony in accordance with the following:

1. The written testimony of a witness shall be in the form of questions and answers or a narrative statement.

2. The witness shall authenticate the document under oath, and

3. The witness shall be subject to cross-examination.

~~(17)~~][~~(18)~~] The hearing officer may accept documentary evidence in the form of copies of excerpts if:

(a) The original is not readily available;

(b) Upon request, parties are given an opportunity to compare the copy with the original, and

(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and other parties at least:

1. Seven (7) working days before the hearing for formal review applications, or

2. Five (5) working days for nonsubstantive review applications.

~~(18)~~][~~(19)~~] A document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.

~~(19)~~][~~(20)~~] The hearing officer may take official notice of facts which are not in dispute, or of generally-recognized technical or scientific facts within the agency's special knowledge.

~~(20)~~][~~(21)~~] The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues

as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open. **The conclusion of the hearing shall occur when the additional information is timely filed or at the end of the designated time period, whichever occurs first.**[, and the conclusion of the hearing shall occur when the additional information is filed.]

(21)[(22)] In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).

(22)[(23)] The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.

[Hearings. (1) Hearings on certificate of need matters shall be held by hearing officers from the Cabinet for Health and Family Services, Health Services Administrative Hearings Branch. A hearing officer shall not act on any matter in which the hearing officer has a conflict of interest as defined in KRS 45A.340. Any party may file with the cabinet a petition for removal based upon a conflict of interest supported by affidavit.

(2) Unless otherwise specified herein, all hearings shall be conducted pursuant to this section.

(3) Notice of the time, date, place and subject matter of each hearing shall be:

(a) Mailed to the applicant and all known affected persons providing the same or similar service in the proposed service area not less than ten (10) days prior to the date of any nonsubstantive review hearing and not less than ten (10) business days prior to the date of any other hearing;

(b) Published in the Certificate of Need newsletter if applicable; and

(c) Provided to members of the general public through public information channels.

(4) A public hearing shall be canceled if the person or persons who requested the hearing withdraws the request by giving written notification to the Division of Certificate of Need that the hearing is no longer required. The consent of affected persons who have not requested a hearing shall not be required in order for a hearing to be canceled.

(5) Any motion, including a motion for summary judgment or a motion to dismiss, which, if sustained, would eliminate the need for a hearing, shall be filed and delivered to all opposing parties at least three (3) days prior to any nonsubstantive review hearing and at least three (3) business days prior to any other hearing. This shall not preclude a party from making a dispositive motion at the hearing based on facts or issues arising at or during the hearing.

(6) Except as specified in Section 18 of this administrative regulation, any party that files any materials or items, including pleadings, with the Division of Certificate of Need, shall also deliver a copy to all opposing parties by personal service, facsimile, or electronic mail as well as by mail.

(7) The hearing officer may convene a preliminary conference.

(a) The purposes of the conference shall be to:

1. Formulate and simplify the issues;

2. Identify additional information and evidence needed for the hearing; and

3. Dispose of pending motions.

(b) A written summary of the preliminary conference and the orders thereby issued shall be made a part of the record.

(c) The hearing officer shall:

1. Tape record the conference, or

2. If requested by a party to the proceedings, arrange for a stenographer to be present at the expense of the requesting party.

(d) During the preliminary conference, the hearing officer may:

1. Instruct the parties to:

a. Formulate and submit a list of genuine contested issues to be decided at the hearing;

b. Raise and address issues that can be decided before the hearing; or

c. Formulate and submit stipulations to facts, laws, and other matters;

2. Prescribe the manner and extent of the participation of the parties or persons who shall participate;

3. Rule on any pending motions for discovery or subpoenas; or

4. Schedule dates for the submission of prefiled testimony, further preliminary conferences, and submission of briefs and documents.

(8) At least five (5) days prior to the scheduled date of any nonsubstantive review hearings and at least seven (7) business days prior to the scheduled date of all other hearings, all persons wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following for each affected application with the cabinet and deliver copies on all other known parties to the proceedings:

(a) Notice of Appearance, Form #3;

(b) Witness List, Form #4; and

(c) Exhibit List, Form #5 and attached exhibits.

(9) (a) If a hearing is requested on an application which has been deferred from a previous cycle and for which a hearing had previously been scheduled, parties shall:

1. File a new Notice of Appearance, Form #3; and

2. Either:

a. Incorporate previously filed witness lists (Form #4) and exhibit lists (Form #5); or

b. File amended Forms #4 and #5.

(b) A new party to the hearings shall file original Forms #3, #4 and #5.

(c) Forms shall be filed in accordance with subsection (8) of this section.

(10) The hearing officer shall convene the hearing and shall state the purpose and scope of the hearing or the issues upon which evidence shall be heard. All parties appearing at the hearing shall enter an appearance by stating their names and addresses.

(11) The hearing officer shall preside over the conduct of each hearing and shall regulate the course of the proceedings in a manner which shall promote the orderly and prompt conduct of the hearing, including determining the manner or form in which evidence may be presented as well as imposing reasonable and appropriate limits on the time allotted to each party to present their respective cases.

(12) A party that is a corporation shall be represented by an attorney licensed to practice in the Commonwealth of Kentucky.

(13) The hearing officer may:

(a) Allow testimony or other evidence on issues not previously identified in the preliminary order which may arise during the course of the hearing, including any additional petitions for intervention which may be filed; and

(b) Question any party or witness.

(14) The hearing officer shall not be bound by the Kentucky Rules of Evidence. Relevant hearsay evidence may be allowed, at the discretion of the hearing officer. The hearing officer shall prohibit and exclude evidence or information which is irrelevant, immaterial, or unduly repetitious.

(15) Testimony presented at the hearing shall be done so under oath or by affirmation. Witnesses shall be examined under oath or affirmation.

(16) Each party shall have the opportunity to present its case in the following manner:

(a) Make opening statements, with each party limited to twenty (20) minutes each;

(b) Introduce direct testimony of relevant, pertinent witnesses, with all testimony also submitted in writing;

(c) Offer documentary evidence into the record;

(d) Make closing statements, with each party limited to twenty (20) minutes each; and

(e) Conduct reasonable cross-examination of opposing witnesses on:

1. Matters covered in direct examination; and

2. Other matters which the hearing officer determines are relevant, pertinent, and productive in resolving the disputed issues.

(17) The direct testimony of witnesses shall be presented in the following manner:

(a) In writing;

(b) In the form of questions and answers or a narrative statement;

(c) Sworn or attested to under the penalty of perjury; and

(d) With all individuals available at the time of the hearing for

~~purposes of cross-examination.~~

~~(18) At least five (5) days prior to any nonsubstantive hearing, the direct testimony of all witnesses shall be filed and delivered to all parties. At least three (3) days prior to a nonsubstantive hearing, objections to any portion of the proposed direct testimony shall be filed and delivered to all parties.~~

~~(19)(a) At least seven (7) business days prior to any other type of hearing, the party that bears the burden of proof shall file and deliver to opposing parties the written direct testimony of all witnesses they intend to introduce at the hearing.~~

~~(b) At least four (4) business days prior to the hearing, the opposing parties shall file and deliver the written direct testimony of all witnesses they intend to introduce at the hearing as well as objections to any portion of the proposed direct testimony previously filed.~~

~~(c) At least two (2) business days prior to the hearing, the party that bears the burden of proof shall file and deliver objections to any portion of the proposed direct testimony submitted by the other parties.~~

~~(20) Failure to make available an individual for purposes of cross-examination shall result in that party not being permitted to offer any written direct testimony from that individual.~~

~~(21) The hearing officer may accept documentary evidence in the form of copies of excerpts if:~~

~~(a) The original is not readily available;~~

~~(b) Upon request, parties are given an opportunity to compare the copy with the original; and~~

~~(c) The documents to be considered for acceptance are listed on and attached to the party's Exhibit List (Form #5) and filed with the hearing officer and delivered to other parties at least:~~

~~1. Five (5) days prior to a nonsubstantive review hearing; or~~

~~2. Seven (7) business days prior to any other hearing.~~

~~(22) Other than the Certificate of Need application and other items submitted, a document shall not be incorporated into the record by reference without the permission of the hearing officer. Any referenced document shall be precisely identified.~~

~~(23) The hearing officer may take official notice of facts which are not in dispute, or of generally recognized technical or scientific facts within the agency's special knowledge.~~

~~(24) The hearing officer may permit a party to offer, or request a party to produce, additional evidence or briefs of issues as part of the record within a designated time after the conclusion of the hearing. During this period, the hearing record shall remain open, and the conclusion of the hearing shall occur when the additional information is filed.~~

~~(25) In a hearing on an application for a certificate of need, the hearing officer shall, upon the agreement of the applicant, continue a hearing beyond the review deadlines established by KRS 216B.062(1) and 216B.095(1).~~

~~(26) The deadlines established with respect to hearings shall be modified, if agreed to by all parties and the hearing officer.~~

~~(27) The cabinet shall forward a copy of the hearing officer's final decision by U.S. mail to each party to the proceedings. The original hearing decision shall be filed in the administrative record maintained by the cabinet.~~]

Section 17. Requests for Reconsideration. (1) In order to be considered, requests for reconsideration shall be filed within fifteen (15) days of the date of the notice of the cabinet's final decision relating to:

(a) Approval or disapproval of an application for a certificate of need;

(b) An advisory opinion entered after a public hearing;

(c) Revocation of a certificate of need; or

(d) A show cause hearing conducted in accordance with Section 18 of this administrative regulation.

(2) A copy of the request for reconsideration shall be served by the requester on all parties to the proceedings.

(3) A party to the proceedings shall have seven (7) days from the date of service of the request for reconsideration to file a response to the request with the cabinet.

(4) If a hearing was held pursuant to subsection (1)(a), (b), or (c) of this section, the hearing officer that presided over the hearing shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(5) If a hearing was held pursuant to subsection (1)(d) of this section, the secretary shall enter a decision to grant or deny a request for reconsideration within thirty (30) days of the request being filed.

(6) If reconsideration is granted a hearing shall be held by the cabinet in accordance with the applicable provisions of Section 16 or 18 of this administrative regulation within thirty (30) days of the date of the decision to grant reconsideration and a final decision shall be entered by the cabinet no later than thirty (30) days following the conclusion of the hearing.

[(7)][~~(6)~~] If reconsideration is granted on the grounds that a public hearing was not held pursuant to KRS 216B.085, the applicant shall have the right to waive the reconsideration hearing if the deficiencies in the application can be adequately corrected by submission of written documentation to be made a part of the record without a hearing.

Section 18. Show Cause Hearings. (1) The cabinet may conduct a show cause hearing on its own initiative or at the request of an affected person, to include hearings requested pursuant to Humana of Kentucky v. NKC Hospitals, Ky., 751 S.W.2d 369 (1988), in order to determine if a person has established or is operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation or is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(2) Unless initiated by the cabinet, in order for a show cause hearing to be held, a request for a show cause hearing submitted by an affected person shall be accompanied and corroborated by credible, relevant, and substantial evidence, including an affidavit or other documentation which demonstrates that there is probable cause to believe that a person:

(a) Has established, or is operating, a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

(b) Is subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(3) Based upon the materials accompanying the request for a show cause hearing, the cabinet shall determine if sufficient cause exists to conduct a hearing.

(4) The cabinet shall conduct a show cause hearing based on its own investigation pursuant to an annual licensure inspection or otherwise which reveals a possible violation of the terms or conditions which are a part of a certificate of need approval and license.

(5) The cabinet shall also conduct a show cause hearing regarding terms and conditions which are a part of a certificate of need approval and license at the request of any person.

(6) The show cause hearing regarding the terms and conditions shall determine whether a person is operating a health facility or health service in violation of any terms or conditions which are a part of that [~~their~~] certificate of need approval and license.

(7) Show cause hearings shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(8) If a show cause hearing is held, the individual or entity alleged to be in violation of KRS Chapter 216B shall have the burden of showing that the individual or entity:

(a) Has not established or is not operating a health facility or health service in violation of the provisions of KRS Chapter 216B or this administrative regulation; or

(b) Is not subject to the penalties provided by KRS 216B.990 for specific violations of the provisions of KRS Chapter 216B.

(9)(a) Except as provided by paragraph (b) or (c) of this subsection, if it is alleged that an office or clinic offering services or equipment covered by the State Health Plan was established or is operating in violation of KRS 216B.020(2)(a), the hearing officer shall base his or her findings of fact and proposed decision on whether the evidence has established the following:

1. The practice claiming the exemption is 100 percent owned in any organizational form recognized by the Commonwealth by the individual physician, dentist, or other practitioner of the healing arts or group of physicians, dentists, or other practitioners of the healing arts (hereinafter collectively referred to as "physician") claiming the exemption;

2. The practice claiming the exemption primarily provides physician services (e.g., evaluation and management codes) rather than services or equipment covered by the State Health Plan;

3. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic shall be primarily provided to patients whose medical conditions are being treated or managed by the practice;

4. A physician or physicians licensed to practice and practicing in Kentucky within the practice claiming the exemption **are** [is] responsible for all decisions regarding the care and treatment provided to patients;

5. Patients are treated on an outpatient basis and are not maintained overnight on the premises of the office or clinic;

6. Services or equipment covered by the State Health Plan which are offered or provided at the office or clinic are related to the professional services offered to patients of the practice claiming the exemption;

7. Major medical equipment in excess of the limits set forth in 900 KAR 6:030 is not being utilized without a Certificate of Need or other statutory or regulatory exemption; and

8. Nothing in this section shall limit or prohibit the continued operation of an office or clinic which was established and in operation prior to January 31, 2006, and operating pursuant to and in accordance with the following:

a. Provisions of a Certificate of Need advisory opinion issued specifically with respect to that office or clinic;

b. Provisions of an Attorney General opinion issued specifically with respect to that office or clinic; or

c. An order issued with respect to that office or clinic by a court of competent jurisdiction in the Commonwealth of Kentucky.

(b) A practice owned entirely by a radiologist or group of radiologists shall demonstrate the following:

1. Compliance with paragraph (a)1, 4, 5, and 6 of this subsection;

2. The radiologists shall regularly perform physician services (e.g., test interpretations) at the location where the diagnostic tests are performed, including interpretations by or through teleradiology; and

3. The billing patterns of the practice indicate that the practice is not primarily a testing facility and that it was organized to provide the professional services of radiology.

(c) An office or clinic owned and operated by a Qualified Academic Medical Center shall demonstrate the following:

1. The physician or physicians providing care and treatment to the patients of the office or clinic shall be licensed to practice in Kentucky and shall be employed by the Qualified Academic Medical Center; and

2.a. The office was established and in operation prior to January 31, 2006,

b. The office does not provide any services or equipment covered by the State Health Plan; or

c. At the time the office began providing care and treatment to patients, it was not located in a county designated as a Metropolitan Statistical Area as defined by the U.S. Office of Management and Budget, and there is a documented agreement of support or collaboration between the Qualified Academic Medical Center and each existing hospital in the county in which the office is located.

(10) Prior to convening a show cause hearing, the cabinet shall give the person suspected or alleged to be in violation not less than twenty (20) days' notice of its intent to conduct a hearing.

(11) The notice shall advise the person of:

(a) The allegations against him;

(b) Any facts determined to exist which support the existence of the allegation; and

(c) The statute or administrative regulation alleged to have been violated.

(12) Notice of the time, date, place, and subject matter of each hearing shall be:

(a) Mailed to all known affected persons or entities not less than ten (10) business days prior to the date of the hearing; and

(b) Published in the Certificate of Need newsletter if applicable.

(13) At least seven (7) business days prior to all hearings required or requested pursuant to KRS Chapter 216B, with the exception of hearings involving applications for or revocation of a certificate of need, all persons or entities wishing to participate as a party to the proceedings shall file an original and one (1) copy of the following with the cabinet and serve copies on all other known parties to the proceedings:

(a) Notice of Appearance, (Form #3);

(b) Witness List, (Form #4); and

(c) Exhibit List, (Form #5) and attached exhibits.

(14) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall tender findings of fact and a proposed decision to the secretary.

(15) Within thirty (30) days of the receipt of the findings of fact and proposed decision from the hearing officer, the secretary shall issue a final decision on the matter.

(16) A copy of the final decision shall be mailed to the person or his legal representative with the original hearing decision filed in the administrative record maintained by the cabinet.

(17) If a violation is found to have occurred as a result of a show cause hearing conducted pursuant to subsection (1) of this section, the cabinet shall take action as provided by KRS Chapter 216B.

(18) If the person is found to have violated any of the terms or conditions of any certificate of need approval and license as a result of a show cause hearing conducted pursuant to subsection (4) of this section, the cabinet shall take the following action:

(a) If the person had not previously been found to be in violation of the terms and conditions which were made a part of the person's certificate of need approval and license, the person shall be given a reasonable period of time, not to exceed sixty (60) days after issuance of the cabinet's decision, in which to demonstrate that the violation has been corrected. At the conclusion of this period, the cabinet shall verify that the facility or service is operating in compliance with the terms or conditions of the certificate of need and license at issue.

(b) If the cabinet is unable to verify that the facility or service has corrected the violation in accordance with paragraph (a) of this subsection, or if a person who had previously been found to be in violation of the terms and conditions which were a part of the person's certificate of need approval and license is found in a subsequent show cause hearing conducted pursuant to this section to be in violation of the terms and conditions again, the matter shall be referred to the Office of Inspector General for appropriate action.

(19) The deadlines established with respect to hearings shall be modified, if agreed to by all parties and the hearing officer.

Section 19. Administrative Escalations. (1) A person shall not obligate a capital expenditure in excess of the amount authorized by an existing certificate of need unless the person has received an administrative escalation or an additional certificate of need from the cabinet.

(2) Requests for administrative escalations shall be submitted to the cabinet on the Cost Escalation Form, Form #6.

(3) The cabinet shall authorize administrative escalations for funds which have not been obligated and which do not exceed the following limits if there is not a substantial change in the project:

(a) Twenty (20) percent of the capital expenditure authorized on the original certificate of need or $100,000, whichever is greater, if the capital expenditure authorized on the certificate of need is less than $500,000;

(b) Twenty (20) percent of the capital expenditure if the capital expenditure authorized on the certificate of need is $500,0000 to $4,999,999;

(c) Ten (10) percent of the amount in excess of $5,000,000, plus $1,000,000, for projects if the capital expenditure authorized on the certificate of need is $5,000,000 to $24,999,999;

(d) Five (5) percent of the amount in excess of $25,000,000, plus $3,000,000, if the capital expenditure authorized on the certificate of need is $25,000,000 to $49,999,999; and

(e) Two (2) percent of the amount in excess of $50,000,000, plus $4,250,000, if the capital expenditure authorized on the certificate of need is $50,000,000 or more.

(4) If an administrative escalation is authorized, the certificate of need holder shall submit any additional certificate of need application fee required by the increased capital expenditure.

(5) The escalation of a capital expenditure in excess of the

limits set forth in subsection (3) of this section shall:

(a) Constitute a substantial change in a project; and

(b) Require a certificate of need pursuant to KRS 216B.061(1)(e).

(6) The unauthorized obligation of a capital expenditure in excess of the amount authorized on a certificate of need shall be:

(a) Presumed to be a willful violation of KRS Chapter 216B; and

(b) Subject to the penalties set forth at KRS 216B.990(2).

Section 20. Timetables and Standards for Implementation. (1) As a condition for the issuance of a certificate of need, a holder of a certificate of need shall submit progress reports on the Certificate of Need Six (6) Month Progress Report, Form #8, at the six (6) month intervals specified in this section.

(2) A notice specifying the date each progress report is due shall be sent to every holder of a certificate of need whose project is not fully implemented.

(3) The cabinet or its designee shall review a progress report and shall determine:

(a) If the required elements have been completed; and

(b) If the required elements have not been completed, if sufficient reasons for failure to complete have been provided.

(4) A certificate of need shall be deemed complete when:

(a) The project has been approved for licensure or occupancy by the Office of Inspector General; and

(b) A final cost breakdown has been submitted.

(5) Until a project is deemed complete by the cabinet, the cabinet may require:

(a) The submission of additional reports as specified in subsections (16) through (18) of this section; or

(b) Progress reports in addition to those required at six (6) month intervals under the provisions of this section.

(6) Except for long-term care bed proposals, a certificate of need shall not be revoked for failure to complete the items required during a six (6) month period, if the holder of the certificate of need establishes that:

(a) The failure was due to emergency circumstances or other causes that could not reasonably be anticipated and avoided by the holder; or

(b) Were not the result of action or inaction of the holder.

(7) If the cabinet determines that required elements have not been completed for reasons other than those set forth in subsection (6) of this section, it shall notify the holder of the certificate of need, in writing, that it has determined to revoke the certificate of need.

(8) The revocation shall become final thirty (30) days from the date of notice of revocation, unless the holder requests a hearing pursuant to KRS 216B.086.

(9) The first progress report for all projects other than long-term care beds shall include:

(a) For projects for the addition of new services or expansion of existing services that do not involve construction, renovation or the installation of equipment: plans for implementation of the project;

(b) For projects for the purchase of equipment only: a copy of the purchase order;

(c) For projects involving the acquisition of real property: evidence of an option to acquire the site; or

(d) For construction or renovation projects: evidence that schematic plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.

(10) For projects other than long-term care beds not deemed complete, a second progress report shall include:

(a) For projects converting beds: documentation that all beds are licensed;

(b) For projects for addition of new services or expansion of existing services that do not involve construction, renovation, or the installation of equipment: documentation of approval for licensure and occupancy by the Office of Inspector General or the Kentucky Board of Emergency Medical Services, or

(c) For construction or renovation projects: the schedule for project completion, evidence of preliminary negotiation with a financial agency, and evidence of preliminary negotiation with contractors.

(11) For projects other than long-term care beds not deemed complete, a third progress report shall include:

(a) For construction or renovation projects:

1. Copy of deed or lease of land;

2. Documentation of final enforceable financing agreement, if applicable;

3. Documentation that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General; and

4. Enforceable contract with a construction contractor; or

(b) For projects for purchase of equipment only: evidence of approval for licensure and occupancy by the Office of Inspector General.

(12) For projects other than long-term care beds not deemed complete, a fourth progress report shall include documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General and evidence that construction has begun.

(13) For projects other than long-term care beds not deemed complete, a fifth progress report shall include documentation that construction or renovation is progressing according to schedule.

(14) For projects other than long-term care beds not deemed complete, a sixth progress report shall include documentation that the project has been approved for licensure or occupancy by the Office of Inspector General and, if required, that the appropriate license has been approved for the health care service or facility.

(15) For projects other than long-term care beds not deemed complete after the sixth progress report, the certificate holder shall, upon request, provide the cabinet or its designee with a written statement showing cause why the certificate should not be revoked. The cabinet may defer revocation action upon a showing by the certificate holder that the project shall be completed on a revised schedule. The cabinet or its designee may require additional progress reports.

(16) For projects involving long-term care beds:

(a) The first progress report shall include:

1. A copy of the deed or lease of land for projects requiring acquisition of real property; and

2. Evidence that final plans have been submitted to the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General.

(b) For projects involving long-term care beds not deemed complete, a second progress report shall include:

1. For conversion of bed projects, documentation that the beds in the project are licensed; or

2. For construction projects:

a. Schedule for project completion with projected dates;

b. Documentation of final financing;

c. Documentation of final plan approval by the Environmental and Public Protection Cabinet, Department of Public Protection, Office of Housing, Buildings and Construction, and the Office of Inspector General, and

d. Enforceable construction contract.

(17) For projects involving long-term care beds not deemed complete, a third progress report shall include documentation that construction or renovation is progressing according to the schedule for project completion.

(18) For projects involving long-term care beds not deemed complete, a fourth progress report shall include documentation that the project has been appropriately licensed and approved for occupancy by the Office of Inspector General.

(19) The cabinet or its designee may grant no more than three (3) additional extensions of six (6) months for good cause shown if the certificate holder of long-term care beds has failed to comply with the relevant progress report requirements established in this section.

(20) If the project involves a capital expenditure, a final cost breakdown shall be included in the final progress report.

(21) If the Office of Inspector General discovers a violation of terms and conditions listed on a certificate of need and license while it is conducting its annual licensure inspection, it shall refer this violation for a show cause hearing in accordance with Section 18 of this administrative regulation.

Section 21. Biennial Review. (1) Certificate of need holders may be subject to biennial review to determine if they are in compliance with the terms as listed on their certificate of need.

(2) Biennial review may be conducted within sixty (60) days of the second anniversary of the final progress report and at twenty-four (24) month intervals thereafter.

(3) The cabinet or its designee shall provide sixty (60) days' advance written notification to the subject of any biennial review, including the following:

(a) When the biennial review shall be initiated;

(b) Request for information necessary for the review to which the cabinet does not have ready access; and

(c) A deadline for response to the request for information.

(4) If the cabinet finds that any of the terms and conditions of a certificate of need approval and license have been violated, the review of, and any sanctions for, this violation shall be conducted in accordance with Section 18(4) of this administrative regulation.

Section 22. Advisory Opinions. (1) The cabinet shall issue advisory opinions regarding matters related to certificate of need on its own initiative or upon request from any person.

(2) Requests for advisory opinions shall be filed with the cabinet and shall be accompanied by the Request for Advisory Opinion, Form #7.

(3) In rendering an advisory opinion, a proposal shall be considered to constitute an improvement within the definition of a non-clinically related expenditure exempt from review if the proposed expenditure meets the definition of an improvement contained in Section 1 of this administrative regulation.

(4) The cabinet may require verification of information and request additional documentation at its discretion prior to issuing an advisory opinion.

(5) The cabinet shall issue a written advisory opinion within thirty (30) days of receipt of a completed request for an advisory opinion or of receipt of additional information.

(6) Public notice of the advisory opinion shall be published in the monthly certificate of need newsletter.

(7) An affected person may request a public hearing regarding an advisory opinion in writing within thirty (30) days of the public notice of the advisory opinion.

(8) The public hearing shall be held within forty-five (45) days of the date of the filing of the request and shall be conducted in accordance with the provisions of Section 16 of this administrative regulation.

(9) The cabinet shall enter a final decision regarding the advisory opinion, within forty-five (45) days of the completion of the public hearing.

(10) If a public hearing is not requested, the advisory opinion shall be the final action of the cabinet.

Section 23. Notification of the Addition or Establishment of a Health Service. (1) Health facilities that make additions to an existing health service for which there are review criteria in the State Health Plan but for which a certificate of need is not required to include ICF/MR respite beds, or add equipment for which there are review criteria in the State Health Plan but for which a certificate of need is not required, shall notify the cabinet that a service or equipment has been added within ten (10) days of addition.

(2) Notice of Addition of a Health Service or Equipment (Form #10) shall be used in making the notification.

Section 24. Certification of Continuing Care Retirement Communities. (1) In order to be certified as a continuing care retirement community, a certificate of compliance shall be obtained from the Division of Certificate of Need.

(2) In order to obtain a certificate of compliance, a continuing care retirement community shall complete and file Form #11 thereby certifying that:

(a) All residents shall have a written agreement with the continuing care retirement community;

(b) The continuing care retirement community shall offer a continuum of residential living options and support services to its residents age sixty (60) and older and may offer these living options and services to persons below age sixty (60) on an as needed basis;

(c) None of the health facilities or health services established by the continuing care retirement community under this section shall apply for or become certified for participation in the Medicaid Program, and that this restriction shall be disclosed in writing to each of its residents;

(d) A claim for Medicaid reimbursement shall not be submitted for a person for a health service established by the continuing care retirement community under this section, and that this restriction shall be disclosed in writing to its residents;

(e) All residents in nursing home beds shall be assessed using the Health Care Financing Administration approved long-term care resident assessment instrument. The assessment shall be transmitted to the state data bank if the nursing home bed is certified for Medicare participation;

(f) Admissions to continuing care retirement community nursing home beds shall be exclusively limited to on-campus residents;

(g) A resident shall not be admitted to a continuing care retirement community nursing home bed prior to ninety (90) days of residency in the continuing care retirement community unless the resident experiences a significant change in health status documented by a physician;

(h) A resident shall not be involuntarily transferred or discharged without thirty (30) days prior written notice to the resident or the resident's guardian;

(i) The continuing care retirement community shall assist a resident upon move-out notice to find appropriate living arrangements;

(j) The continuing care retirement community shall share information on alternative living arrangements provided by the Division of Aging Services at the time a move-out notice is given to a resident; and

(k) Written agreements executed by the resident and the continuing care retirement community shall contain provisions for assisting any resident who has received a move-out notice to find appropriate living arrangements.

(3) The Division of Certificate of Need shall issue a certificate of compliance within thirty (30) days of receipt of a completed Form #11 if all conditions are met. If all conditions are not met, the cabinet shall advise the applicant of any deficiencies. Upon correction of the deficiencies, the cabinet shall issue the certificate of compliance within thirty (30) days of correction.

(4) A continuing care retirement community's nursing home beds shall be considered to have been established for purposes of KRS Chapter 216B upon the issuance of an authority to occupy by the cabinet.

(5) If, after having obtained an initial certificate of compliance, a continuing care retirement community wishes to establish additional nursing home beds, an additional certificate of compliance shall be obtained from the cabinet.

(6) Upon request, the continuing care retirement community shall provide the Division of Certificate of Need the payor source for each of its nursing home beds.

(7) Upon request, the continuing care retirement community shall provide the Division of Certificate of Need the number of each type of bed or living unit within the continuing care retirement community.

Section 25. Critical Access Hospitals. A certificate of need shall not be required for a critical access hospital to reestablish the number of acute care beds that the hospital operated prior to becoming a critical access hospital if the hospital decides to discontinue operating as a critical access hospital.

Section 26. Swing Beds. (1) An acute care hospital or a critical access hospital that has been designated as a swing bed hospital by the Office of Inspector General, having met the requirements of 42 C.F.R 482.66 or 485.645, shall not be required to obtain a cer-

tificate of need to utilize its licensed acute or critical access hospital beds as swing beds.

(2) For a designated swing bed hospital to add new acute or critical access hospital beds which may be utilized as swing beds, the hospital's proposal shall be consistent with the State Health Plan's review criteria for hospital acute care beds and certificate of need approval shall be required.

Section 27. Pilot Angioplasty Program. The provisions of this section shall apply to the pilot project for primary angioplasty in hospitals without on-site open heart surgery ("pilot program") established in the 2004-2006 State Health Plan. (1) Hospitals participating in the pilot program shall immediately (within twenty-four (24) hours of the event or on the first business day following the event) report the following events to the Division of Certificate of Need by fax at (502) 564-0302 or e-mail (joni cracraft@ky.gov):

(a) Death within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. The report shall indicate if the death was a "cardiac death" or a "noncardiac death".

1. A death shall be considered a "cardiac death" if the death was due to any of the following:

a. Acute myocardial infarction;

b. Cardiac perforation/pericardial tamponade;

c. Arrhythmia or conduction abnormality;

d. Cerebrovascular accident related to, or suspected of being related to, the cardiac catheterization procedure. An event shall be considered to be a "cerebrovascular accident" if there were acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred:

(i) During the index catheterization; or

(ii) During the index hospitalization;

e. Death due to complication of the procedure including bleeding, vascular repair, transfusion reaction, or bypass surgery; or

f. Any death in which a cardiac cause could not be excluded.

2. A death shall be considered a "noncardiac death" if the death was not due to cardiac causes as described in subparagraph 1 of this paragraph;

(b) Emergency coronary artery bypass surgery (CABG) within twenty-four (24) hours of the procedure or hospital discharge. An event shall be considered to be an "emergency" if there is a sudden and often life-threatening mishap that arises in the course of, and as a result of, the performance of a cardiac catheterization or angioplasty procedure. It shall not include patients either transferred directly from the cardiac catheterization procedure room or taken within twenty-four (24) hours to the operating room for surgical correction of emergent/life threatening cardiac disease; or

(c) Shock within twenty-four (24) hours of the procedure or hospital discharge.

(2) Hospitals participating in the pilot program shall report to the Division of Certificate of Need in writing within seven (7) days, any of the following events:

(a) Cerebrovascular accident, which are acute neurological deficits recorded by clinical staff that persisted more than twenty-four (24) hours. The report shall note if these events occurred within thirty (30) days after the catheterization but were not clearly related to the procedure;

(b) Any intracranial bleed within thirty (30) days of the cardiac catheterization procedure;

(c) Recurrent Q wave or Non-Q wave Myocardial Infarction (MI) during the initial hospitalization; or

(d) Vascular complications which occur within twenty-four (24) hours of the cardiac catheterization procedure or hospital discharge. These shall include:

1. Hematoma more than four (4) centimeters;

2. Retroperitoneal Bleed;

3. False Aneurysm;

4. AV fistula;

5. Peripheral ischemic/nerve injury; or

6. Hemolysis and Hemolytic anemia.

(3) Hospitals participating in the pilot program shall.

(a) Establish a Joint Performance Improvement Committee (Joint PI Committee) with its collaborating tertiary hospital or with practicing interventional cardiologists. The membership of the Joint PI Committee shall, at a minimum, include each of the following disciplines: physicians, nurses and administrators from both the pilot program hospital and the collaborating tertiary hospital;

(b) Convene the Joint PI Committee at least quarterly but sooner if twenty-five (25) patients have been treated to review the care provided to patients under the pilot program. This review process shall focus on patient outcomes and, at a minimum, include:

1. An assessment of the appropriateness of the selection of each patient entered into the pilot program;

2. All complications, any adverse outcomes, number of the patients requiring and reason for transfer to a tertiary facility;

3. The technical quality of the catheterization and angioplasty procedures performed; and

4. The "door to cath lab time" and "door to treatment time";

(c) Develop and implement a plan of correction for any problems identified;

(d) Develop a process for including the findings of the Joint PI Committee's review in the pilot program hospital's performance improvement program;

(e) Require the Joint PI Committee to make a quarterly recommendation to the Division of Certificate of Need whether the pilot program should continue; and

(f) Require all staff (including, at a minimum, Interventional [~~interventional~~] cardiologists, nurses and technicians) as well as representatives of the Emergency Department and Critical Care Unit staffs participating in the pilot program PI process, to attend a minimum of one (1) meeting of the Joint PI Committee per year.

(4) Performance of primary angioplasty (as measured by quality indicators including mortality, morbidity, and adverse reactions) at a pilot hospital shall be comparable, on a risk adjusted basis, to the performance of existing angioplasty programs in Kentucky and with similar organizations nationally, according to the National Cardiovascular Data Registry.

(a) If the outcomes are worse at a pilot hospital, that facility shall file and implement a plan of correction with the Division of Certificate of Need.

(b) If the facility's results do not improve after one (1) quarter of implementing a plan of correction, the Division of Certificate of Need may terminate the facility's participation in the pilot program.

(5) Hospitals participating in the pilot program shall:

(a) Continue to make available the cardiac catheterization service twenty-four (24) hours per day and seven (7) days per week;

(b) Develop policies and procedures that will assure that all interventional cardiologists performing primary angioplasty procedures at the pilot program hospital will maintain an appropriate level of proficiency as a member of the team performing primary angioplasty at the pilot program hospital. The policies and procedures shall detail the process the physician director will utilize to assure the establishment, maintenance and monitoring of the proficiency of each interventional cardiologist;

(c) Maintain a collaborative association and a current, valid collaboration agreement with a tertiary hospital including Joint PI and staff education programs; and

(d) Perform a minimum of thirty-six (36) primary angioplasty procedures per year. At least thirty (30) of these angioplasty procedures shall be primary angioplasty procedures, excluding patients that have "rescue angioplasty" procedures performed.

(6) The time frame for measuring compliance with procedural utilization requirements shall begin six (6) months after the date of the physician director's notification to the Division of Certificate of Need that all training requirements have been fulfilled. Within twelve (12) months from the "start date," the hospital shall have performed eighteen (18) primary angioplasty procedures or shall receive a warning that approval to participate in the pilot program may be withdrawn.

(7) Within the following six (6) months, a total of eighteen (18) months from the date of the department's letter of approval, the hospital shall have performed at least another eighteen (18) procedures (a total of thirty-six (36) primary angioplasty procedures) or the program may be discontinued at that site.

(8) Each site shall continue to perform eighteen (18) primary angioplasty procedures per six (6) months and a total of thirty-six (36) primary angioplasty procedures per year, or the program may

be discontinued at that site.

(9) All physicians performing percutaneous coronary intervention (PCI) at a pilot program hospital shall.

(a) Continue to perform no fewer than 100 cardiac catheterization procedures per year (total diagnostic and therapeutic). At least seventy-five (75) procedures shall be angioplasty procedures unless the procedures are being performed at a facility at which more than 400 angioplasty procedures are being performed per year; and

(b) Maintain credentials at a hospital at which that operator performs elective angioplasty procedures

(10)(a) All staff that are hired after the completion of the initial training at the pilot program hospital shall complete a training program that mirrors the initial training program. The relevant collaborating tertiary and pilot program hospitals shall develop this training program.

(b) Training of all staff including, at a minimum, all interventional cardiologists, nurses and technicians, shall be performed on the intra-aortic balloon pump annually.

(c) All staff involved in providing PCI, including the interventional cardiologists, nurses and technicians, shall have a current Advanced Cardiac Life Support (ACLS) certification.

(d) Inservice programs shall, at a minimum, be based upon need identified through staff evaluations and quality assurance process.

(11) The Division of Certificate of Need may discontinue the pilot program at a participant hospital at any time after reviewing the following:

(a) Quarterly reports made by the American College of Cardiology - National Cardiovascular Data Registry (ACC-NCDR);

(b) Records obtained through an audit;

(c) Peer review reports; or

(d) Reports on serious adverse events.

(12) Upon notification to the hospital by the Division of Certificate of Need, the hospital shall terminate the pilot program and cease to perform primary angioplasty procedures

(13) In order to assist the Division of Certificate of Need in evaluating the pilot program, the performance of pilot hospitals, and the formulation of recommendations for continuing or modifying the project, the Division of Certificate of Need may collaborate with university based researchers to

(a) Evaluate and compare performance data of pilot hospitals with existing Kentucky angioplasty programs; and

(b) Conduct an evaluation of the short-and long-term outcomes of patients undergoing primary angioplasty at pilot hospitals with those patients transferred to hospitals with open heart surgical backup.

(14) The Division of Certificate of Need shall review reports from the collaborating university based researchers as well as quarterly reports made by the ACC-NCDR, records obtained through audit, peer review reports and reports of serious adverse events in order to develop recommendations for continuing, discontinuing, or modifying the pilot program. If the project is continued, these recommendations shall include establishing criteria for determining need to expand angioplasty services to additional hospitals without on-site surgical backup, qualifications of those hospitals, and ongoing requirements for a hospital's continued provision of this service.

(15) The Division of Certificate of Need may convene all hospitals participating in the pilot program on a regular basis for the purpose of discussing and assessing the status of the implementation of the pilot program.

(16) Three (3) years from the start date of the pilot program, the Division of Certificate of Need shall publish a report on the program. The report shall:[,]

(a) Indicate whether it is in the best interest of the Commonwealth to eliminate the requirement for open heart surgery for hospitals to perform therapeutic cardiac catheterization; and

(b) Include the requirements for patient selection, procedural volume, and staffing that hospitals shall continue to meet to provide this service if the Division of Certificate of Need finds that this service may be provided by hospitals in the absence of on-site open heart surgery.

Section 28. Magnetic Resonance Imaging Report. (1) A Magnetic Resonance Imaging unit (MRI) utilized in the Commonwealth shall be disclosed to the Cabinet for Health and Family Services, Office of Health Policy for publication in the Kentucky Annual Magnetic Resonance Imaging Services Report.

(2) The following information shall be submitted about every MRI unit utilized in the Commonwealth:

(a) Name, address, and telephone number of the facility at which each unit is located or to be utilized;

(b) Identification of designated contact person or authorized agent of each facility;

(c) Make, model, and serial number of each unit;

(d) Date the unit became operational at each site;

(e) Whether the unit is free-standing or mobile (if the unit is mobile, then also identify the number of days the unit is operational); and

(f) Number of scans performed during the previous calendar year.

(3) The owner or operator of any MRI unit that becomes operational at an unlicensed facility after August 1, 2006, shall have thirty (30) days after use of the unit is commenced to provide the information required by subsection (2) of this section.

(4) The information shall be provided by completion of "The Annual Survey of Magnetic Resonance Imaging Services". **A copy of that survey may** be obtained, completed, and transmitted electronically by accessing the Office of Health Policy's Web site at http://chfs.ky.gov/ohp/con. A copy can also be obtained at the Cabinet for Health and Family Services, Office of Health Policy, 275 East Main Street 3CB, Frankfort, Kentucky 40621.

(5) Within thirty (30) days of an event, the designated contact person or authorized agent shall notify the Office of Health Policy about any change in the facility's address or the addition of another MRI unit as well as the discontinuation of any units.

Section 29 [30] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Letter of Intent", (Form #1) (10/12/99);

(b) "Certificate of Need Application", (Form #2A) (3/6/03);

(c) "Certificate of Need Application for Ground Ambulance Providers", (Form #2B) (6/15/99),

(d) "Certificate of Need Application for Change of Location, Replacement, or Cost Escalation", (Form #2C) (3/6/03);

(e) "Notice of Appearance", (Form #3) (3/6/03);

(f) "Witness List", (Form #4) (3/6/03);

(g) "Exhibit List", (Form #5) (3/6/03);

(h) "Cost Escalation Form", (Form #6) (6/15/99);

(i) "Request for Advisory Opinion", (Form #7) (3/6/03);

(j) "Six (6) Month Progress Report", (Form #8) (6/15/99);

(k) "Acquisition of a Health Facility, Notice of Intent to Acquire (Form #9)", (3/6/03);

(l) "Notice of Addition of a Health Service or Equipment", (Form #10) (6/15/99);

(m) "Application for Certificate of Compliance for a Continuing Care Retirement Community (CCRC)", (Form #11) (11/29/00); and

(n) "Annual Survey of Magnetic Resonance Imaging Services", (5/12/06).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Division of Certificate of Need, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4.30 p.m.

SHAWN E. CROUCH, Chief of Staff
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: June 11, 2007
FILED WITH LRC: June 12, 2007 at 4 p m
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

ADMINISTRATIVE REGULATIONS AMENDED AFTER PUBLIC HEARING OR RECEIPT OF WRITTEN COMMENTS

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amended After Comments)

806 KAR 6:120. Recognition of preferred mortality tables for use in determining minimum reserve liabilities.

RELATES TO: KRS 304.6-130 - 304 6-180
STATUTORY AUTHORITY: KRS 304.2-110, 304.6-140, 806 KAR 6:075
NECESSITY, FUNCTION AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.6-140 provides that the executive director may approve by administrative regulation any mortality table adopted by the National Association of Insurance Commissioners for use in determining the minimum standard for valuation of policies. This administrative regulation establishes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with KRS 304 6-140 and 806 KAR 6:075.

Section 1. Definitions. (1) "2001 CSO Mortality Table" means a mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the National Association of Insurance Commissioners in December 2002. The 2001 CSO Mortality Table is published in the Proceedings of the NAIC (2nd Quarter 2002) and supplemented by the 2001 CSO Preferred Class Structure Mortality Table. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both:

(a) The ultimate form and the select and ultimate form of the table,

(b) The smoker and nonsmoker mortality tables and the composite mortality tables; and

(c) The age-nearest-birthday and the age-last-birthday bases of the mortality tables.

(2) "2001 CSO Mortality Table (F)" means a mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

(3) "2001 CSO Mortality Table (M)" means a mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

(4) "2001 CSO Preferred Class Structure Mortality Table" means a mortality table with separate rates of mortality for super preferred nonsmokers, preferred nonsmokers, residual standard nonsmokers, preferred smokers and residual standard smoker splits of the 2001 CSO nonsmoker and smoker tables as described in the report dated January 13, 2006, and adopted by the National Association of Insurance Commissioners at the **September** [~~June~~] 2006 meeting and published in the **NAIC Proceedings (3rd Quarter 2006)** [~~minutes for that meeting~~]. Unless the context indicates otherwise, the "2001 CSO Preferred Class Structure Mortality Table" includes both:

(a) The ultimate form and the select and ultimate form of the table;

(b) The smoker and nonsmoker mortality tables;

(c) The male and female mortality tables and the gender composite mortality table; and

(d) The age-nearest-birthday and age-last-birthday bases of the table.

(5) "CSO" means Commissioners Standard Ordinary.

(6) "Composite mortality tables" mean the mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

(7) "Executive director" is defined in KRS 304.1-050(1).

(8) "Smoker and nonsmoker mortality tables" mean mortality tables with separate rates of mortality for smokers and nonsmokers.

[~~(9) "Statistical agent" means an entity with proven systems for protecting the confidentiality of individual insured and insurer information; demonstrated resources for and a history of ongoing electronic communications and data transfer ensuring data integrity with insurers, which are its members or subscribers; and a history of and means for aggregations of data and accurate promulgation of the experience modifications in a timely manner.~~]

Section 2. 2001 CSO Preferred Class Structure Table. (1) At the election of the insurer for any one or more specified plan of insurance and subject to the conditions stated in this administrative regulation, the 2001 CSO Preferred Class Structure Mortality Table may be substituted in place of the 2001 CSO Smoker and Nonsmoker Mortality Table as the minimum valuation standard for policies issued on or after January 1, 2007, to which KRS 304 6-140 and 806 KAR 6.075 are applicable.

(2) No election shall be made until the insurer can demonstrate at least twenty (20) percent of the business to be valued on this table is in one or more of the preferred classes.

(3) A table from the 2001 CSO Preferred Class Structure Mortality Table used in place of a 2001 CSO Mortality Table, pursuant to the requirements of this administrative regulation, will be treated as part of the 2001 CSO Mortality Table only for purposes of reserve valuation pursuant to the requirements of 806 KAR 6:110.

Section 3. Conditions (1) For each policy of insurance with separate rates for preferred and standard nonsmoker lives, an insurer may use the super preferred nonsmoker, preferred nonsmoker and residual standard nonsmoker tables to substitute for the nonsmoker mortality table found in the 2001 CSO Mortality Table to determine minimum reserves. At the time of election and annually thereafter, except for business valued under the residual standard nonsmoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten (10) years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the valuation basic table corresponding to the valuation table being used for that class.

(2) For each policy of insurance with separate rates for preferred and standard smoker lives, an insurer may use the preferred smoker and residual standard smoker tables to substitute for the smoker mortality table found in the 2001 CSO Mortality table to determine minimum reserves. At the time of election and annually thereafter, for business valued under the preferred smoker table, the appointed actuary shall certify that:

(a) The present value of death benefits over the next ten (10) years after the valuation date, using the anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation **basic** [~~basis~~] table corresponding to the valuation table being used for that class.

(b) The present value of death benefits over the future life of the contracts, using anticipated mortality experience without recognition of mortality improvement beyond the valuation date for each class, is less than the present value of death benefits using the preferred smoker valuation basic table.

JULIE MIX MCPEAK, Executive Director
TIMOTHY J. LEDONNE, Commissioner

LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 13, 2007
FILED WITH LRC: July 13, 2007 at 11 a m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with KRS 304.6-140 and 806 KAR 6:075.

(b) The necessity of this administrative regulation: The current system of reserving for life insurance does not address all insurance risks and reserves are too conservative for some companies and not adequate for other companies. A collaborative effort is underway to develop a uniform approach for a new reserving method that will address those issues; however, many states, including Kentucky, have reserving methods that will expire in 2007. This regulation will continue the current system while adopting new mortality tables that represent an incremental step in moving towards this new reserving method.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for the effectuation of any provision of the Kentucky Insurance Code KRS 304.6-140 provides that the executive director may approve by administrative regulation any mortality table adopted by the national Association of Insurance Commissioners for use in determining the minimum standard for valuation of policies. This administrative regulation establishes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities in accordance with KRS 304.6-140 and 806 KAR 6 075

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the use of mortality tables that reflect differences in mortality between preferred and standard lives in determining minimum reserve liabilities for life insurance policies. The laws establishing Kentucky's current reserve methods expire in 2007. This administrative regulation will continue the current system while adopting new mortality tables that represent an incremental step in moving towards a new reserving method that considers an insurer's risk and appropriate reserves based on that risk.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of

(a) How the amendment will change this existing administrative regulation: This is a new regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance in Kentucky, and the approximately 43,000 insurance agents that are licensed to sell life insurance in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment Regulated entities will be required to utilize these new mortality tables in calculating their reserves.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) This regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.

(5) Provide an estimate of how much it will cost to implement this regulation

(a) Initially: The cost will be minimal.

(b) On a continuing basis There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: the budget of the Kentucky Office of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-)
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amended After Comments)

806 KAR 12:120. Suitability in annuity transactions.

RELATES TO: KRS 304.9-390, 304.12-010, 304.99-020
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation sets forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020.
(2) "Annuity" is defined in KRS 304.5-030.
(3) "Consultant" is defined in KRS 304.9-040.
(4) "Executive director" is defined in KRS 304.1-050(1).
(5) "Insurance producer" is defined in KRS 304.9-020(4).
(6) "Insurer" is defined in KRS 304.1-040.
(7) "Licensee," means agent, insurer where no agent is involved, and consultant.
(8) "Recommendation" means advice provided by a licensee, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

Section 2. Exemptions. Unless otherwise specifically included, this administrative regulation shall not apply to recommendations involving:
(1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation;
(2) Contracts used to fund:
(a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
(b) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
(c) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
(d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
(e) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
(f) Prepaid funeral contracts.

Section 3. Duties of Licensees. (1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the licensee shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.
(2) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, the licensee shall make reasonable efforts to obtain information concerning:
(a) The consumer's financial status;
(b) The consumer's tax status;
(c) The consumer's investment objectives; and
(d) ~~[The consumer's risk tolerance, and~~
~~(e)~~] Other information used or considered to be reasonable by the licensee in making recommendations to the consumer.
(3)(a) Except as provided under paragraph (b) of this subsection, the licensee shall have no obligation to a consumer under subsection (1) related to any recommendation if a consumer:
1. Refuses to provide relevant information requested by the licensee;
2. Decides to enter into an insurance transaction that is not based on a recommendation of the licensee; or
3. Fails to provide complete or accurate information.
(b) A licensee's recommendation subject to paragraph (a) shall be reasonable under all the circumstances actually known to the licensee at the time of the recommendation.
(4)(a) An insurer either:
1. Shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this administrative regulation is established and maintained by complying with paragraphs (c) through (e) of this subsection, or
2. Shall:
a. Establish and maintain written procedures; and
b. Conduct periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this administrative regulation.
(b) A supervising insurance producer shall adopt a system established by an insurer to supervise recommendations of its agents that is reasonably designed to achieve compliance with this administrative regulation, or shall establish and maintain such a system, including, but not limited to:
1. Maintaining written procedures; and
2. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this administrative regulation.
(c) An insurer may contract with a third party, including an insurance producer, to establish and maintain a system of supervision as required by paragraph (a) of this subsection with respect to insurance agents under contract with or employed by the third party.
(d) An insurer shall make reasonable inquiry to assure that the third party contracting under paragraph (c) of this subsection is performing the functions required under paragraph (a) of this subsection and shall take action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:
1. The insurer annually obtains a certification from a senior manager of the third party who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and
2. The insurer, based on reasonable selection criteria, periodically selects third parties contracting under paragraph (c) of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that is reasonable under the circumstances.
(e) An insurer that contracts with a third party pursuant to paragraph (c) of this subsection and that complies with the requirements to supervise in paragraph (d) of this subsection shall have fulfilled its responsibilities under paragraph (a) of this subsection.
(f) An insurer or supervising insurance producer shall not be required by paragraph (a) or (b) of this subsection to:
1. Review, or provide for review of, all agent solicited transactions; or
2. Include in its system of supervision an agent's recommendations to consumers of products other than the annuities offered by the insurer or supervising insurance producer.
(g) A supervising insurance producer contracting with an insurer pursuant to paragraph (c) of this subsection shall promptly, when requested by the insurer pursuant to paragraph (d) of this subsection, give a certification as described in paragraph (d)(1) of this subsection or give a clear statement that it is unable to meet the certification criteria.
(h) No person may provide a certification under paragraph (d)(1) of this subsection unless:
1. The person is a senior manager with responsibility for the delegated functions; and
2. The person has a reasonable basis for making the certifica-

tion.

(5) Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the executive director's ability to enforce the provisions of this administrative regulation.

Section 4. Mitigation of Responsibility. (1) The executive director may require:

(a) An insurer to take appropriate corrective action for any consumer harmed by the insurer's, or by its agent's, violation of this administrative regulation;

(b) An agent to take appropriate corrective action for any consumer harmed by the insurance agent's violation of this administrative regulation;

(c) A supervising insurance producer that employs or contracts with an insurance agent to sell, or solicit the sale, of annuities to consumers, to take appropriate corrective action for any consumer harmed by the agent's violation of this regulation; and

(d) A consultant to take appropriate corrective action for any consumer harmed by the consultant's violation of this administrative regulation.

(2) Any applicable penalty under KRS 304.99-020 for a violation of Section 3(1), (2) or (3) of this administrative regulation may be reduced or eliminated, if corrective action for the consumer was taken promptly after a violation was discovered.

Section 6. Recordkeeping. Licensees shall maintain records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions in accordance with KRS 304.9-390 and 806 KAR 2.070.

Section 7. Effective Date The requirements, Implementation, and enforcement of this regulation shall begin on January 1, 2008 [~~December 1, 2007~~].

JULIE MIX MCPEAK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 13, 2007
FILED WITH LRC: July 13, 2007 at 11 a.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that purchasers of annuities are being offered products that are appropriate for their individual financial objectives.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation will clarify the duty to evaluate the consumer's financial status before recommending the purchase of a new or replacement annuity product

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will require agents and insurers, if no agent is involved, to evaluate a consumer's financial status, objectives, and risk tolerance before recommending the purchase of an annuity and to provide safeguards against inappropriate purchases.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers and, 43,000 agents that are licensed to offer annuity products in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to demonstrate that an annuity purchase is a suitable transaction for a prospective buyer in accordance with this regulation, using existing resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that, because this is a national standard, that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes insurance regulation of annuity products across the various states and should reduce the overall cost of doing business for regulated entities.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The initial cost to implement this administrative regulation will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementing and enforcing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies and agents offering annuity products in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304 2-110

4. Estimate the effect of this administrative regulation on the

expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amended After Comments)

806 KAR 12:140. Life insurance illustrations.

RELATES TO: KRS 304 12-010, 304.12-020
STATUTORY AUTHORITY: KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation provides illustration formats, prescribes standards to be followed if illustrations are used, and specifies the disclosures that are required in connection with illustrations for life insurance policies.

Section 1. Definitions. (1) "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(2) "Agent" is defined in KRS 304.9-020(1).

(3) "Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements that is given to the applicant or policy owner no later than the time of delivery of the policy.

(4) [~~(3)~~] "Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

(5) [~~(4)~~] "Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next ninety-five (95) days.

(6) [~~(5)~~] "Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience.

(7) [~~(6)~~] "Executive director" is defined in KRS 304.1-050(1).

(8) [~~(7)~~] "Generic name" means a short title descriptive of the policy being illustrated.

(9) [~~(8)~~] "Guaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are guaranteed and determined at issue.

(10) [~~(9)~~] "Illustrated scale" means a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

(a) The disciplined current scale, or

(b) The currently payable scale.

(11) [~~(10)~~] "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years and that is either a basic illustration, supplemental illustration or in force illustration.

(12) [~~(11)~~] "Illustration actuary" means an actuary meeting the requirements of Section 12 of this administrative regulation who certifies to illustrations based on the standard of practice promulgated by the Actuarial Standards Board.

(13) [~~(12)~~] "In force illustration" means an illustration furnished at any time after the policy has been in force for one (1) year or more.

(14) [~~(13)~~] "Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting as defined in this administrative regulation, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five (5) years and 100 percent policy persistency thereafter.

(15) [~~(14)~~] "Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form.

(16) [~~(15)~~] "Nonguaranteed elements" means the premiums, benefits, values, credits or charges under a policy of life insurance that are not guaranteed or not determined at issue.

(17) [~~(16)~~] "Nonterm group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(a) Every plan of coverage was selected by the employer or other group representative;

(b) Some portion of the premium is paid by the group or through payroll deduction; and

(c) Group underwriting or simplified underwriting is used.

(18) [~~(17)~~] "Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

(19) [~~(18)~~] "Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

(20) [~~(19)~~] "Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, if using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth (15th) policy anniversary or the twentieth (20th) policy anniversary for second-or-later-to-die policies or upon policy expiration if sooner, the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For the purpose of a self-supporting illustration, policy owner value shall include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.

(21) [~~(20)~~] "Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this administrative regulation.

Section 2. Applicability and Scope. This administrative regulation applies to all group and individual life insurance policies sold and certificates issued on or after the effective date of this administrative regulation except.

(1) Variable life insurance;

(2) Individual and group annuity contracts;

(3) Credit life insurance; and

(4) Life insurance policies, where illustrated death benefits on any individual do not exceed ten thousand (10,000) dollars at any time.

Section 3. Disciplined Current Scale. (1) A disciplined current scale shall be certified annually by an illustration actuary designated by the insurer.

(2) Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

(a) Are consistent with all provisions of this administrative regulation;

(b) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;

(c) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed

improvements in experience beyond the illustration date; and

(d) Do not permit assumed expenses to be less than minimum assumed expenses.

Section 4. Minimum Assumed Expenses. (1) Each year, the insurer may choose to designate the method of determining assumed expenses for all policy forms from the following:

(a) Fully allocated expenses;

(b) Marginal expenses; and

(c) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the executive director.

(2) Marginal expenses may be used only if they are greater than a generally recognized expense table. **If there is no generally-recognized expense table which has been** [~~if a generally recognized expense table is not~~] approved, fully allocated expenses shall be used.

Section 5. Supplemental Illustration. A supplemental illustration may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.

Section 6. Policies to Be Illustrated. (1) Each insurer marketing policies to which this administrative regulation applies shall notify the executive director as to whether a policy form is to be marketed with or without an illustration.

(a) For all policy forms being actively marketed on the effective date of this administrative regulation, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. Written identification shall be submitted to the executive director on or before the effective date of this administrative regulation.

(b) For policy forms filed after the effective date of this administrative regulation, the identification shall be made when the policy form is filed. Any previous identification may be changed by notice to the executive director.

(2) If the insurer identifies a policy as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary shall be prohibited.

(3) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared in accordance with this administrative regulation and delivered no later than the time of delivery of the policy shall be required.

(a) A basic illustration shall not be required to be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals.

(b) The illustration furnished to an applicant for a group life insurance policy **or policies** issued to a single applicant on multiple lives may be either:

1. an individual or composite illustration representative of the coverage on the lives of members of the group; or

2. an individual or composite illustration representative of the multiple lives covered.

(4)(a) Potential enrollees of a nonterm group life insurance policy subject to this administrative regulation shall be furnished a quotation with the enrollment materials.

(b) The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage.

(c) The quotation shall not be considered an illustration for purposes of this administrative regulation, but all information provided shall be consistent with the illustrated scale.

(d) A basic illustration shall be provided at delivery of the certificate to enrollees for a non-term group life insurance policy who enroll for more than the minimum premium necessary to provide pure death benefit protection.

(e) An insurer shall make a basic illustration available to any enrollee of a non-term group life insurance policy upon request of the enrollee.

Section 7. General Rules and Prohibitions. (1) An illustration used in the sale of a life insurance policy shall:

(a) Satisfy the applicable requirements of this administrative regulation;

(b) Be clearly labeled "life insurance illustration"; and

(c) Contain the following basic information:

1. Name of insurer;

2. Name and business address of the **agent** [~~insurer's authorized representative~~], if any;

3. Name, age and gender of the proposed insured, except where a composite illustration is permitted under this administrative regulation;

4. Underwriting, rating, or rating classification upon which the illustration is based;

5. Generic name of the insurance policy, the company product name, if different, and the form number;

6 Initial death benefit; and

7. Dividend option election or application of non-guaranteed elements, if applicable.

(2) If an insurer **or its agents** uses an illustration in the sale of a life insurance policy, an insurer **or its agents** or its authorized representatives shall not:

(a) Represent the policy as anything other than a life insurance policy;

(b) Use or describe nonguaranteed elements in a manner that is misleading or has the capacity to mislead;

(c) State or imply that the payment or amount of nonguaranteed elements is guaranteed;

(d) Use an illustration that does not comply with the requirements of this administrative regulation;

(e) Use an illustration that depicts policy performance at any policy duration more favorable to the policy owner than the policy performance produced by the insurer's illustrated scale;

(f) Provide an incomplete illustration;

(g) Represent in any way that premium payments shall not be required for each year of the policy in order to maintain the illustrated death benefits, except for policies that do not require premium payments for each year of the policy in order to maintain the illustrated death benefit;

(h) Use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up to describe a plan for using non-guaranteed elements to pay a portion of future premiums;

(i) Use an illustration that is lapse-supporting, except for policies that can never develop nonforfeiture values; or

(j) Use an illustration that is not self-supporting.

(3) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

Section 8. Standards for Basic Illustrations. (1) A basic illustration shall conform with the following format requirements:

(a) The illustration shall include the date on which it was prepared.

(b) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration.

(c) The assumed dates of payment receipt and benefit pay-out within a policy year shall be clearly identified.

(d) If the age of the proposed insured is shown as a component of the tabular detail, the age shall be issue age plus the number of years the policy is assumed to have been in force.

(e) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay.

(f) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed.

(g) If the illustration shows any nonguaranteed elements, they shall not be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed.

(h) Any guaranteed elements shall be shown before corre-

sponding non-guaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the non-guaranteed elements.

(i) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender.

(j) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans and policy loan interest, as applicable.

(k) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form.

(l) Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

1. The benefits and values are not guaranteed;

2. The assumptions on which they are based are subject to change by the insurer; and

3. Actual results may be more or less favorable.

(m) If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any further purpose, the illustration may reflect those plans and the impact on future policy benefits.

(n) If the illustration shows that the premium payor may have the option to allow policy charges to be paid using dividends or any other non-guaranteed value, the illustration shall clearly disclose that a charge continues to be required and that, depending on actual results, the premium payor may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up.

(2) A basic illustration shall include a narrative summary that conforms to the following requirements:

(a) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(b) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium outlay that shall be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code;

(c) A brief description of any policy features, riders or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(d) Identification and a brief definition of column headings and key terms used in the illustration; and

(e) A statement containing in substance the following: "This illustration assumes that the currently illustrated non-guaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(3)(a) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable.

(b) For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium.

(c) The summary required by subsection (3)(a) of this section for a policy that provides for a contract premium shall be shown for at least policy years five (5), ten (10), and twenty (20) and age seventy (70), if applicable, for the bases set forth in subsection (3)(e) of this section. If coverage would cease prior to policy maturity or age one (100) hundred, the year in which coverage ceases shall also be shown.

(d) The summary required by subsection (3)(a) of this section for multiple life insurance policies shall show policy years five (5), ten (10), and twenty (20) and thirty (30) for each of the bases set forth in subsection (3)(e) of this section. If coverage would cease prior to policy maturity or age one (100) hundred the year in which coverage ceases shall also be shown.

(e) The bases that shall be illustrated are as follows:

1. Policy guarantees;

2. Insurer's illustrated scale; and

3. Insurer's illustrated scale with the non-guaranteed elements reduced as follows:

a. Dividends at fifty (50) percent of the dividends contained in the illustrated scale used;

b. Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

c. All nonguaranteed charges, including but not limited to, term insurance charges, mortality and expense charges at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used.

(4) Statements substantially similar to the following shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner if an illustration is provided when the policy is delivered, as required in this administrative regulation.

(a) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."

(b) A statement to be signed and dated by the [~~insurance~~] agent reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(5)(a) A basic illustration shall include the following tabular detail for at least each policy year from one (1) to ten (10) and for every fifth policy year thereafter ending at age one (100) hundred, policy maturity or final expiration and, except for term insurance beyond the twentieth (20th) year, for any year in which the premium outlay and contract premium, if applicable, is to change:

1. The premium outlay and the mode the applicant plans to pay and the contract premium, as applicable;

2. The corresponding guaranteed death benefit, as provided in the policy; and

3. The corresponding guaranteed value available upon surrender, as provided in the policy;

(b) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium.

(c) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends. If any non-guaranteed elements are shown they shall be shown at the same durations as the corresponding guaranteed elements, if any. If no guaranteed benefit or value is available at any duration for which a non-guaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

Section 9. Standards for Supplemental Illustrations. (1) A supplemental illustration may be provided if:

(a) It is appended to, accompanied by or preceded by a basic illustration that complies with this administrative regulation;

(b) The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;

(c) It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and

(d) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(2) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

Section 10. Delivery of Illustration and Record Retention. (1)(a) If a basic illustration is used by an [~~insurance~~] agent in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this administrative regulation, shall be submitted to the insurer when the policy application is submitted. A copy also shall be provided to the applicant.

(b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall.

1. Conform to the requirements of this administrative regulation;

2. Be labeled "Revised Illustration;" and

3. Be signed and dated by the applicant or policy owner and [~~insurance~~] agent no later than the time the policy is delivered.

(c) A copy shall be provided to the insurer and the policy owner.

(2)(a) If no illustration is used by an [~~insurance~~] agent [~~or other authorized representative~~] in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the [~~insurance~~] agent shall certify to that effect in writing on a form provided by the insurer. On the same form, the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than when the policy is delivered. This form shall be submitted to the insurer when the policy application is submitted.

(b) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered. A copy shall be provided to the insurer and the policy owner.

(3) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(4) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with a certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer in accordance with 806 KAR 2.070. **A copy of the basic illustration and the revised illustration need not be retained if no policy is issued.**

Section 11. Annual Report; Notice to Policy Owners. (1) If a policy form is designated as one for which illustrations shall be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain, at a minimum, the following information:

(a) For universal life insurance policies, the report shall include the following:

1. The beginning and end date of the current report period;

2. The policy value at the end of the previous report period and at the end of the current report period,

3. The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type;

4. The current death benefit at the end of the current report period on each life covered by the policy;

5. The net cash surrender value of the policy as of the end of the current report period;

6. The amount of outstanding loans, if any, as of the end of the current report period; and

7.a. For fixed premium policies, if, assuming guaranteed interest, mortality and expense loads, and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

b. For flexible premium policies, if, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

(b) For all other policies, where applicable:

1. Current death benefit;

2. Annual contract premium;

3. Current cash surrender value;

4 Current dividend;

5 Application of current dividend; and

6. Amount of outstanding loan.

(c) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years if a change has been made to non-guaranteed policy elements by the insurer.

(2) If the annual report does not include an in force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling {insurer's phone number}, writing to {insurer's name} at {insurer's address} or contacting your agent. If you do not receive a current illustration of your policy within thirty (30) days from your request, you should contact your state insurance department." The insurer may vary the sequential order of the methods for obtaining an in force illustration.

(3) Upon the request of the policy owner, the insurer shall furnish an in force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of Sections 7(1), (2) and 8(5) of this administrative regulation. No signature or other acknowledgement of receipt of this illustration shall be required.

(4) If an adverse change in non-guaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change prominently displayed.

Section 12. Annual Certifications. (1) The board of directors of each insurer shall appoint one or more illustration actuaries.

(2) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance promulgated by the Actuarial Standards Board, and that the illustrated scale meets the requirements of this administrative regulation.

(3) The illustration actuary shall:

(a) Be a member in good standing of the American Academy of Actuaries;

(b) Be familiar with the standard of practice regarding life insurance policy illustrations;

(c) Not have been found by the executive director, following appropriate notice and hearing, to have:

1. Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as an illustration actuary;

2. Been found guilty of fraudulent or dishonest practices;

3. Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

4. Resigned or been removed as an illustration actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a failure to adhere to generally acceptable actuarial standards;

(d) Notify the executive director of any action taken by a commissioner of another state similar to that under paragraph (3)(c) of this section;

(e) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five (5) years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If non-guaranteed elements illustrated for new policies are not con-

sisted with those illustrated for similar in force policies, this shall be disclosed in the annual certification. If non-guaranteed elements illustrated for both new and in force policies are not consistent with the non-guaranteed elements actually being paid, charged or credited to the same or similar forms, this shall be disclosed in the annual certification; and

(f) Disclose in the annual certification which of the following methods were used to allocate overhead expenses for all illustrations:

1. Fully allocated expenses;

2. Marginal expenses; or

3. A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the executive director.

(4)(a) The illustration actuary shall file a certification with the board of directors of the insurer and with the executive director:

1. Annually for all policy forms for which illustrations are used; and

2. Before a new policy form is illustrated.

(b) If an error in a previous certification is discovered, the illustration actuary shall notify the board of directors of the insurer and the executive director promptly.

(5) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the executive director promptly of his or her inability to certify.

(6) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(a) That the illustration formats meet the requirements of this administrative regulation and that the scales used in illustrations are those scales certified by the illustration actuary; and

(b) That the insurer has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (3)(f) of this section.

(7) The annual certifications shall be provided to the executive director each year by a date determined by the insurer.

(8) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the executive director of that fact promptly and disclose the reason for the change.

Section 13. [6.] Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on January 1, 2008 [~~December 1, 2007~~].

JULIE MIX MCPEAK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 13, 2007
FILED WITH LRC: July 13, 2007 at 11 a.m
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the formats for illustrations used in the sale of life insurance policies, prescribes standards to be followed when illustrations are used, and specifies the disclosures that are required in connection with illustrations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that illustrations do not mislead purchasers of life insurance and to make illustrations more understandable by prescribing a standard format for all illustrations that will eliminate, as far as possible, the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation will clarify the format and language used in illustrations for life insurance policies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will provide requirements for life insurance policy illustrations that will protect consumers and foster consumer education. The requirements in this administrative regulation provide a format for all illustrations that will eliminate, as far as possible, the use of footnotes and caveats and define terms used in the illustration in language that would be understood by a typical person within the segment of the public to which the illustration is directed.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer life insurance in Kentucky, and the approximately 43,000 insurance agents that are licensed to sell life insurance in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to conform to uniform standards for the content and application of life insurance illustrations, using their existing resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies and insurance agents offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amended After Comments)

806 KAR 12:150. Annuity disclosures.

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230
STATUTORY AUTHORITY. KRS 304.2-110
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation requires insurers to deliver information to purchasers of annuities that will improve the buyer's ability to select the most appropriate annuity for the buyer's needs and improve the buyer's understanding of the basic features of the product that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Life Insurance and Annuities Buyer's Guide published by the Commonwealth of Kentucky Office of Insurance.

(2) "Charitable gift annuity" is defined in KRS 304.1-120.

(3) "Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

(4) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates including any bonus, benefits, values, noninterest based credits, charges or elements of formulas used to determine at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements

(5) "Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one (1) or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

(6) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated.

(7) "Guaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, noninterest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(8) "Nonguaranteed elements" means the premiums, credited interest rates including any bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(9) "Structured settlement annuity" means

(a) A "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code, or

(b) An annuity that would be a qualified funding asset under section 130(d) except for the fact that it is not owned by an assignee under a qualified assignment.

Section 2. Applicability. This administrative regulation applies to all group and individual annuity contracts and certificates except:

(1) Registered or nonregistered variable annuities or other registered products;

(2)(a) Annuities used to fund:

1. An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);

2. A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;

3. A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(b) Notwithstanding Paragraph (a) of this subsection this administrative regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

(3) Structured settlement annuities;

(4) Charitable gift annuities; and

(5) Funding agreements.

Section 3. Standards for the disclosure document and buyer's guide. (1)(a) Where the application for an annuity contract is solicited personally by an agent, the applicant shall be given both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than the time of application.

(b) Where the application for an annuity contract is taken by means other than a personal solicitation by an agent, the applicant shall be sent both the disclosure document described in subsection (3) of this section and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

1. With respect to an application received as a result of a direct solicitation through the mail:

a. Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to sat-

isfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.

b. Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

2. With respect to an application received via the Internet:

a. Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days or receipt of the application.

b. Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's Web site shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application

3. A solicitation for an annuity contract that is not personally solicited by an agent shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

(c) Where the Buyer's Guide and disclosure document described in subsection (3) of this section are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look period shall run concurrently with any other free look period provided under state law or regulation.

(2) The following information shall be included in the disclosure document required to be provided under this administrative regulation:

(a) The generic name of the contract, the company product name, if different, form number, and the fact that it is an annuity;

(b) The insurer's name and address;

(c) A description of the contract and its benefits, emphasizing its long-term nature, including the following information:

1. The guaranteed, nonguaranteed and determinable elements of the contract, and their limitations, if any, and an explanation of how they operate;

2. An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

3 Periodic income options both on a guaranteed and nonguaranteed basis;

4. Any value reductions caused by withdrawals from or surrender of the contract;

5. How values in the contract can be accessed;

6. The death benefit, if available, and how it will be calculated;

7. A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

8. An explanation of the impact of any rider, such as a long-term care rider.

(d) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply.

(e) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(3) The disclosure statement shall comply with the minimum standards for readability and intelligibility in 806 KAR 14.121.

Section 4. Report to Contract Owners. (1) For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(2) The beginning and end date of the current report period;

(3) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(4) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

(5) The amount of outstanding loans, if any, as of the end of the current report period.

Section 5. Effective Date The requirements, implementation, and enforcement of this regulation shall begin on **January 1, 2008** [~~December 1, 2007~~].

JULIE MIX MCPEAK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 13, 2007
FILED WITH LRC: July 13, 2007 at 11 a.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires insurers to deliver information to annuity buyers that will help the buyer select the most appropriate insurance for the buyer's needs and help the buyer understand the product features.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for annuity disclosures to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary following, or as an aid to, the effectuation of any provision of the Kentucky Insurance Code KRS 304.12-020, 304.12-030, and 304.12-230 require insurance marketing information to be accurate and not deceptive or misleading. This administrative regulation will standardize annuity disclosures to the consumer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation formalizes a procedure for complying with the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes. This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers that are licensed to offer annuity products in Kentucky and the approximately 43,000 insurance agents that are licensed to sell annuities in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to comply with the uniform standards for disclosures to annuity buyers, using their existing resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the

entities identified in question (3): This administrative regulation is part of a package that standardizes the regulation of annuity marketing across the various states and should reduce the overall cost of doing business for regulated entities.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees. This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering annuity products in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance as the implementer of the regulation will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)

Expenditures (+/-):

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amended After Comments)

806 KAR 12:160. Standards for accelerated death benefits.

RELATES TO: KRS 304.6-170, 304.6-171, 304.12-010, 304.12-020, 304.12-235, 304.14-600(2), 304.15-115, 806 KAR 14.005

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation sets forth standards for accelerated death benefits in individual life insurance forms.

Section 1. Definitions. (1) "Accelerated death benefit" means the advance payment of some or all of the death proceeds payable under a life insurance policy:

(a) To the owner, during the lifetime of the insured at the time of a qualifying event;

(b) That reduces the death benefit otherwise payable under the policy through a present value payment or imposition of a lien upon the death benefits; and

(c) That are payable upon the occurrence of any single qualifying event with respect to the insured resulting in the payment of a benefit amount fixed at the time of acceleration.

(2) "Executive director" is defined in KRS 304.1-050(1)

(3) "Form" means accelerated death benefit form, or policy provision if the benefit is built into the policy.

(4) "Office" is defined in KRS 304.1-050(2).

(5) "Qualifying event" means a medical condition that is reasonably expected to result in a drastically limited life span for the insured. The company's definition of a drastically limited life span shall have a minimum of "6 months or less" and a maximum of "24 months or less", and shall be specified in the form.

Section 2. Applicability. These standards apply to accelerated death benefits in individual life insurance policies. These standards shall not apply to long-term care insurance or policies providing long-term care benefits.

Section 3. Form Filings. The following form filing requirements apply to accelerated death benefits and shall be included on Form L-TD (1/1/06), incorporated by reference in 806 KAR 14:006, or as an attachment to the filing.

(1) A statement of the types of policy forms with which this benefit will be offered.

(2) Any underwriting restrictions involving face amount or age.

(3) Whether the benefit is intended for use with new issues, or in force business, or both.

(4) A notice describing the amount of the accelerated benefit option and its effect on the other benefit provisions of the policy, to be provided to the owner prior to or concurrent with the election of the accelerated death benefit option.

(5) An actuarial memorandum prepared, dated and signed by the member of the American Academy of Actuaries which shall provide the following information:

(a) A description of the accelerated death benefit, including the effects of payment of the accelerated death benefit on all policy benefits, premium payments, cost of insurance rates, and values, including any outstanding loan, if applicable, for all types of forms with which the accelerated death benefit will be used;

(b) Justification for expense charges associated with the accelerated death benefit and the maximum expense charges;

(c) The interest rate or interest rate methodology used in any present value calculation or in accruing interest on the amount of the accelerated death benefit, which shall not exceed the greater of

1. The current yield on 90-day treasury bills; or

2. An adjustable rate determined in accordance with KRS 304.15-115;

(d) The mortality basis and methodology, including the period of time applicable to any mortality discount, used in any present value calculation of the accelerated death benefit;

(e) The mortality and morbidity basis and methodology used in the determination of any separate premium or costs of insurance for the accelerated death benefit;

(f) The formula used to determine the accelerated death benefit, including any limitations on the amount of the benefit, and the

formula used to determine the post-acceleration premium;

(g) A sample calculation of the accelerated death benefit. If the policy contains a loan provision, the example shall assume that there is an outstanding loan at date of acceleration. All policy benefits, premium payments, cost of insurance charges and values, including the outstanding loan, if applicable, immediately before and immediately after acceleration must be shown in the example;

(h) If an accelerated death benefit may be paid in installments, the basis used in the calculation of the minimum periodic payment for the payment period and a sample calculation of a minimum periodic payment. If the insured dies before all periodic payments for the payment period are made, identification of the basis used and a sample calculation of the lump sum payable; and

(i) A certification that the value and premium of the accelerated death benefit is incidental to the life coverage.

Section 4. General Form Requirements. (1) The cover page of the form, or the cover page of the policy if the benefit is built into the policy, shall include the following in prominent type:

(a) The term "accelerated death benefit" shall be included in the brief description or descriptive title of the form.

(b) A clear statement that the death benefit and any accumulation values and cash values, and, if applicable, premium payments or cost of insurance charges, will be reduced if an accelerated death benefit is paid.

(c) A clear statement that the owner should seek additional information from his personal tax advisor about the tax status of the accelerated death benefit payment.

(2) The form shall not contain provisions that unfairly discriminate among insureds with differing qualifying events covered under the form, or among insureds with similar qualifying events covered under the form.

(3) Products subject to these standards shall not be described as long-term care insurance or as providing long-term care benefits.

(4) The percentage or dollar amount of the policy death benefit that may be accelerated may be limited. Any limit shall be specified in the form.

(5) A time frame within which proof of eligibility must be provided is prohibited.

Section 5. Benefit Design Options. (1) The form shall describe the accelerated death benefit option or options that are available to the owner, such as the payment of all of the death benefit of the policy, the payment of part of the death benefit of the policy, or a lien on the death benefit of the policy.

(2) If the form allows for the present value calculation, the form shall:

(a) Specify the amount of the death benefit of the policy that may be accelerated by the owner;

(b) State that the company may apply a portion of the accelerated death benefit to repay an outstanding policy loan but only up to the amount of the outstanding policy loan multiplied by the percentage of the policy death benefit that has been accelerated;

(c) State that the premium shall be reduced to the premium that would apply had the policy been issued at the reduced amount, and may be further reduced according to some defined formula, such as pro rata reduction, or become paid-up;

(d) State that the company may pay the owner a present value of the policy death benefit that is being accelerated. The interest rate or interest rate methodology used in the calculation shall be disclosed in the form; and

(e) State that the policy cash value, if any, shall be reduced by the same percentage as the policy death benefit.

(3) If the payment to the owner of the accelerated death benefit is treated as a lien on the death benefits of the policy, the form shall state that:

(a) The lien may be applied only against the policy death benefit, not against any policy cash value,

(b) The lien may bear interest. The interest rate accrued on the portion of the lien which is equal to the cash value of the policy at the time of acceleration shall be no more than the policy loan interest rate stated in the policy. For the amount of the lien in excess of such cash value, the interest rate or interest rate methodology shall be disclosed in the form;

(c) Expense charges may be added to the lien;

(d) Due and unpaid premiums may be included in the lien after the automatic premium loan, if available, is exercised; and

(e) Access to the policy cash value may be restricted to the excess of the cash value over the sum of the lien and any other outstanding policy loans.

(4) Any premium charge or cost of insurance charge for the accelerated death benefit shall be disclosed to the insured. A premium charge or cost of insurance charge is prohibited for a qualifying event of the type described in Section 11(1)(a) of this administrative regulation

(5) The company may deduct a reasonable expense charge for accelerating the death benefit and shall state the maximum expense charge in the form.

(6) If any index used in determining the accelerated death benefit is discontinued, the company shall use an appropriate substitute index subject to the approval of the executive director.

(7) The form or policy shall not:

(a) Provide that the insured forfeits the remainder of the policy death benefit upon acceleration of part of the policy death benefit.

(b) Place an aggregate limit provision that caps the accelerated death benefits payable for all policies issued by the company and its subsidiaries and affiliates.

(c) Require that the accelerated death benefit will be provided only if the policy would remain in force for a specific period of time following acceleration. However, the option may exclude from acceleration any term insurance coverage scheduled to terminate prior to the end of the period used to define a qualifying event of the type described in Section 11(1)(a) of this administrative regulation.

(d) Contain any restrictions on the use of the accelerated death benefit proceeds.

(8) A form with an accelerated death benefit shall include an option at the time of acceleration:

(a) To reduce the accelerated death benefit payment by an amount actuarially determined to pay the remaining premiums, or

(b) To continue to pay premiums to keep the policy in force.

Section 6. Effect of Benefit Payment on other Benefit Provisions. (1) Prior to or concurrent with the election to accelerate the policy death benefits, the owner and any irrevocable beneficiary shall be given a statement demonstrating the effect of the acceleration of the payment of death benefits on the cash value, death benefit, premium, cost of insurance charges, and policy loans, including policy liens, of the particular policy involved. The statement shall display any premium or cost of insurance charges necessary to continue coverage following the acceleration, and shall display all expense and interest charges associated with accelerating the death benefit. Statements for use with liens shall say that future due and unpaid premiums or cost of insurance charges may be included in the lien if the provision so provides The statement shall be based only on guaranteed values and shall not show any projected or non-guaranteed values. The statement shall include a disclosure that receipt of an accelerated death benefit may affect eligibility for Medicaid or other government benefits or entitlements and may have income tax consequences.

(2) The form shall describe the effect of acceleration on premiums, cost of insurance charges, cash values and loan values, as applicable.

(3) The form shall describe the effect that acceleration of death benefits will have on coverage on another insured under the policy.

(4) When a part of the death benefit remains after payment of the accelerated death benefit, the following requirements shall apply

(a) Where the accelerated death benefit is paid under a present value calculation, the policy shall be modified by an endorsement, which includes a statement of cash values, policy loans, premiums, cost of insurance charges, and death benefits following acceleration;

(b) The dividends or non-guaranteed elements credited shall not discriminate between policies whose death benefits have been reduced through acceleration and policies originally issued in the amount of the reduced death benefits; and

(c) The accidental death benefit provision, if any, in the policy shall not be affected by the payment of the accelerated death benefit.

Section 7. Exclusions or Restrictions. The accelerated death benefit shall not contain exclusions or restrictions that are not also exclusions or restrictions in the policy.

Section 8. Incontestability. The accelerated death benefit shall be incontestable on the same, or on a more favorable basis, as the individual policy.

Section 9. Payment Options. (1) The payment options shall include the option to receive the accelerated death benefit payment in a lump sum, and may include an option to receive the benefit in periodic payments for a period certain. Periodic payments based on the continued survival or institutional confinement of the insured are prohibited.

(2) The amount payable as a lump sum shall be at least equal to the acceleration percentage multiplied by the difference between the current policy cash value and any outstanding policy loans. The current policy cash value shall include any termination dividend payable on the surrender of the policy.

(3) The form shall specify what occurs if the insured dies before all payments of the accelerated death benefit are made. If the present value of remaining payments is paid, the interest rate used to calculate any present value of the settlement option shall be that assumed in calculating the original payments.

(4) If the insured dies after the owner elects to receive accelerated death benefits but before any such benefits are received, the election shall be cancelled and the death benefit paid pursuant to the policy.

Section 10. Payment Procedures. (1) The procedures required to accelerate the death benefit of the policy shall be specified in the form. The procedures specified shall be at least as favorable as the following:

(a) If the company requires the filing of a proof of eligibility claim form, the company shall provide the claim form within fifteen (15) days of the acceleration request. If the claim form is not furnished within fifteen (15) days, it is considered that the claimant complied with the claim requirements if the claimant submits written proof covering the occurrence, the character and the extent of the occurrence for which claim is made;

(b) The company may reserve the right to require a second or third medical opinion to confirm benefit eligibility. The second or third medical opinions shall be provided at the company's expense. The second medical opinion may include a physical examination by a physician designated by the company. In the case of conflicting opinions, eligibility for benefits shall be determined by a third medical opinion that is provided by a physician that is mutually acceptable to the insured and the company.

(c) The accelerated death benefit shall be paid to the owner or owner's estate while the insured is living, unless the benefit has been otherwise assigned or designated by the owner;

(d) Prior to the payment of the accelerated death benefit, the company shall obtain from any assignee or irrevocable beneficiary a signed acknowledgement of concurrence for payout. If the company paying the accelerated death benefit is itself the assignee under the policy, no acknowledgement is required; and

(e) Payment of the accelerated death benefit is due immediately upon receipt of the due written proof of eligibility. Companies are subject to the requirements of KRS 304.12-235 with respect to any delay in processing requests to accelerate the payment of death benefits.

Section 11. Qualifying Events. (1) A qualifying event may, at the option of the company, include one or more of the following:

(a) A medical condition that requires extraordinary medical intervention, such as major organ transplant or continuous artificial life support, without which the insured would die;

(b) A condition that usually requires continuous confinement in an institution, as defined in the form, and the insured is expected to remain there for the rest of his or her life;

(c) A specified medical condition that, in the absence of extensive or extraordinary medical treatment, would result in a drastically limited life span; or

(d) A chronic illness defined as permanent inability to perform a specified number of activities of daily living without substantial assistance from another individual, or permanent severe cognitive impairment; or both.

(2) The form shall specify the terms and conditions applicable to each qualifying event.

(3) The form shall not require that the cause of a qualifying event first manifest itself or be diagnosed after issuance of the individual policy or form.

(4) The form shall not include a waiting period requirement.

(5) A requirement that the individual policy or form be in force past the incontestable period is prohibited.

Section 12. Reinstatement. The form shall include a reinstatement provision on the same, or more favorable, terms as contained in the policy.

Section 13. Termination. (1) The form shall include the following termination conditions:

(a) Upon written request;

(b) Upon termination of the policy; or

(c) Upon nonpayment of any separate premium or cost of insurance charge for the accelerated death benefit, in accordance with the provisions of the form or the policy.

(2) The form may state that the accelerated death benefit may terminate when a nonforfeiture benefit becomes effective under the policy.

(3) The form shall state that termination shall not prejudice the payment of benefits for any qualifying event that occurred while the form was in force.

Section 14. Effective Date. The requirements, implementation, and enforcement of this regulation shall begin on **January 1, 2008** ~~[December 1, 2007]~~

JULIE MIX MCPEAK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 13, 2007
FILED WITH LRC: July 13, 2007 at 11 a.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth standards and procedures for life insurance policies that have an accelerated death benefit, including form filing requirements and consumer protection disclosures.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that life insurance policies with accelerated death benefits meet minimum benefit standards and are offered appropriately to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation provides standards and procedures for life insurance policies with accelerated death benefits.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will standardize form filings and disclosures to consumers required by statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative

regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the insurers that offer life products with accelerated death benefits in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to calculate and present life insurance accelerated death benefits in accordance with standardized procedures, and to certify compliance with the regulation annually, using their existing actuarial resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The initial cost to implement this administrative regulation will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis to implement this administrative regulation.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementing and enforcing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance products with accelerated death benefits in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance as the implementer of the regulation will be impacted.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-).

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amended After Comments)

806 KAR 12:170. Life insurance disclosures.

RELATES TO: KRS 304.12-010, 304.12-020, 304.12-230

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation requires insurers to deliver information to purchasers of life insurance that will improve the buyer's ability to select the most appropriate plan of life insurance for the buyer's needs and improve the buyer's understanding of the basic features of the policy that has been purchased or is under consideration.

Section 1. Definitions. (1) "Buyer's Guide" means the current Life Insurance and Annuities Buyer's Guide published by the Commonwealth of Kentucky Office of Insurance.

(2) "Generic name" means a short title that is descriptive of the premium and benefit patterns of a policy or a rider.

(3) "In force illustration" is defined in 806 KAR 12:140.

(4) "Nonguaranteed elements" means the premiums, credited interest rates, including any bonus, benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(5) "Policy data" means a display or schedule of numerical values, both guaranteed and nonguaranteed for each policy year or a series of designated policy years of the following information:

(a) Illustrated annual, other periodic, and terminal dividends;

(b) Premiums;

(c) Death benefits;

(d) Cash surrender values, outstanding policy loans, current policy loan interest rate, and endowment benefits.

(6) "Policy summary" means a separate document describing the elements of the policy, including, but not limited to:

(a) A permanently placed title as follows: STATEMENT OF POLICY COST AND BENEFIT INFORMATION;

(b) The name and address of the insurance agent or, if no agent is involved, a statement of the procedure to be followed in order to receive responses to inquiries regarding the policy summary;

(c) The full name and home office or administrative office address of the life insurance company issuing the policy;

(d) The generic name of the basic policy and each rider;

(e) The following amounts, where applicable, for the first ten (10) policy years and representative policy years thereafter sufficient to clearly illustrate the premium and benefit patterns; including at least an age from sixty (60) through sixty-five (65) and policy maturity. Amounts shall be listed in total, not on a per thousand or per unit basis:

1. The annual premium for the basic policy;

2. The annual premium for each optional rider;

3. The amount payable upon death at the beginning of the policy year under the basic policy with additional benefits for each rider shown separately. If more than one insured is covered under one policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class[-];

4. The total guaranteed cash surrender values at the end of the year with values shown separately for the basic policy and each rider; and

5. Any endowment amounts payable under the policy that are not included under cash surrender values above;

(f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether the rate is applied in advance or in arrears. If the policy loan interest rate is adjustable, the policy summary shall state that the annual percentage rate will be determined in accordance with the provisions of the policy and the applicable law; and

(g) The day on which the policy summary is prepared.

Section 2. Application. (1) Except for the exemptions specified in Section 2(2) of this administrative regulation, this administrative regulation shall apply to any solicitation, negotiation or procurement of life insurance occurring within this state. This administrative regulation shall apply to any issuer of life insurance contracts including fraternal benefit societies

(2) This administrative regulation shall not apply to:

(a) Individual and group annuity contracts;

(b) Credit life insurance;

(c) Group life insurance;

(d) Life insurance policies issued in connection with pension and welfare plans which are subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. Section 1001 et seq as amended, or

(e) Variable life insurance under which the amount or duration of the life insurance varies according to the investment experience of a separate account.

Section 3. Duties of Insurers. (1) Requirements for New Issues.

(a) The insurer shall provide the Buyer's Guide to all prospective purchasers, **prior to accepting the applicant's initial premium or premium deposit. However, if the policy for which application is made contains an unconditional refund provision of at least ten (10) days, the Buyer's Guide may be delivered with the policy or prior to delivery of the policy.** [~~at the time of application.~~]

(b) The insurer shall provide a policy summary to prospective purchasers **where the insurer has identified the policy form as one that will not be marketed with an illustration.**

1. The policy summary shall show guarantees only.

2. The policy summary shall consist of a separate document with all required information set out in a manner that does not minimize or render any portion of the summary obscure.

3. Amy amounts that remain level for two (2) or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year.

4. Amounts in Section 1(6)(e) of this administrative regulation shall be listed in total, not on a per thousand or per unit basis.

5. If more than one (1) insured is covered under one (1) policy or rider, death benefits shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class.

6. Zero amounts shall be displayed as a blank space.

7. Delivery of the policy summary shall be consistent with the time for delivery of the Buyer's Guide as specified in paragraph (a) of this subsection. [~~no later than the time of delivery of the policy~~].

(2) Requirements Applicable to Existing Policies.

(a) Upon request by the policy owner, the insurer shall furnish the policy data **or an in force illustration as follows:**[~~.~~]

1. For policies issued prior to January 1, 2008, the insurer shall furnish policy data, or, at its option, an in force illustration meeting the requirements of 806 KAR 12:140.

2. For policies issued on and after January 1, 2008 that were declared not to be used with an illustration, the insurer shall furnish policy data, limited to guaranteed values, if it has chosen not to furnish an in force illustration meeting the requirements of the regulation.

3. If the policy was issued on and after January 1, 2008 and declared to be used with an illustration, an in force illustration shall be provided.

4. Unless otherwise requested, the policy data shall be provided for twenty (20) consecutive years beginning with the previous policy anniversary.

5. [~~2.~~] The insurer may charge a reasonable fee for the policy data, not to exceed ten (10) dollars.

(b) If a life insurance company changes its method of determining scales of nonguaranteed elements on existing policies, it shall notify each affected policy owner of the change and its effect on the policy no later than the date of the first payment on the new basis. This requirement shall not apply to policies for which the death benefit under the basic policy on the date of notice does not exceed $5,000.

(c) If the insurer makes a material revision in the terms and conditions which will limit its right to change any nonguaranteed factor, it shall notify each affected policy owner of the change no later than the first policy anniversary following the revision.

Section 4. General Rules. (1) Prior to commencing a life insurance sales presentation, an agent shall inform the prospective purchaser that he or she is acting as a life insurance agent. The agent shall inform the prospective purchaser in writing of the full name of the insurance company which the agent represents. In sales situations in which an agent is not involved, the insurer shall identify its full name.

(2) An insurance producer marketing insurance products shall not use any title or designation, including but not limited to, "financial planner," "investment advisor," "financial consultant," or "financial counseling" to imply that he or she is engaged in an advisory or consulting business in which compensation is unrelated to sales. This provision is not intended to preclude persons who are recognized as having a financial planning or consultant designation from using the designation even when they are only selling insurance. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

(3) Any reference to nonguaranteed elements shall include a statement that the item is not guaranteed and is based on the company's current scale of nonguaranteed elements. If a nonguaranteed element would be reduced by the existence of a policy loan, a statement to that effect shall be included in any reference to nonguaranteed elements.

Section 5 Failure to Comply. (1) Failure of an insurer to provide or deliver the Buyer's Guide, an in force illustration, a policy summary, or policy data shall constitute an omission that misrepresents the benefits, advantages, conditions or terms of an insurance policy.

Section 6. Effective Date The requirements, implementation, and enforcement of this regulation shall begin on **January 1, 2008**

~~[December 1, 2007]~~.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference: The Life Insurance and Annuities Buyer's guide, Commonwealth of Kentucky.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m. Forms may also be obtained on the offices' internet web site at: http://doi.ppr.ky.gov/kentucky.

JULIE MIX MCPEAK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 13, 2007
FILED WITH LRC: July 13, 2007 at 11 a.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation requires insurers to deliver information to life insurance buyers that will help the buyer select the most appropriate insurance for the buyer's needs and help the buyer understand the policy features.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish uniform standards for life insurance disclosures to consumers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. KRS 304.12-020, 304.12-030, and 304.12-230 require insurance marketing information to be accurate and not deceptive or misleading. This administrative regulation will standardize life insurance disclosures to the consumer.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation formalizes a procedure for complying with the statute.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will effect the approximately 520 insurers that are licensed to offer life insurance in Kentucky.

Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to deliver information to the buyers of life insurance products in compliance with this regulation, using their existing resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The cost will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis.

(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There will be no increase in fees or funding necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-)
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amended After Comments)

806 KAR 15:060. Universal life insurance.

RELATES TO: KRS 304.6-120, 304.6-140, 304.6-145, 304.6-

150, 304.14-120, 304.15-040, 304.15-300, 304.15-310, 304.15-340, 304.15-342

STATUTORY AUTHORITY: KRS 304.2-110

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. This administrative regulation supplements existing regulations on life insurance policies in order to accommodate the development and issuance of universal life insurance policies.

Section 1. Definitions. (1) "Cash surrender value" means the net cash surrender value plus any amounts outstanding as policy loans.

(2) "Executive director" is defined in KRS 304.1-050(1).

(3) "Fixed premium universal life insurance policy" means a universal life insurance policy other than a flexible premium universal life insurance policy.

(4) "Flexible premium universal life insurance policy" means a universal life insurance policy which permits the policyowner to vary, independently of each other, the amount or timing of one (1) or more premium payments or the amount of insurance.

(5) "Guaranteed maturity premium for flexible premium universal life insurance policies" means that level gross premium, paid at issue and periodically thereafter over the period which premiums are allowed to be paid, which will mature the policy on the latest maturity date, if any, permitted under the policy (otherwise at the highest age in the valuation mortality table), for an amount which is in accordance with the policy structure.

(6) "Interest-indexed universal life insurance policy" means any universal life insurance policy where the interest credits are linked to an external reference.

(7) "Net cash surrender value" means the maximum amount payable to the policyowner upon surrender.

(8) "Policy value" means the amount to which separately identified interest credits and mortality, expense, or other charges are made under a universal life insurance policy.

(9) "Universal life insurance policy" is defined in 806 KAR 12:080.

Section 2. Application. This regulation applies to all individual universal life insurance policies except variable universal life insurance policies.

Section 3. Valuation. (1) Requirements: The minimum valuation standard for universal life insurance policies shall be the Commissioners Reserve Valuation Method, as described below for such policies, and the tables and interest rates specified below. The terminal reserves for the basic policy and riders for which premiums are not paid separately as of any policy anniversary shall be equal to the net level premium reserves less (C) and (D), where:

Reserves by the net level premium method shall be equal to ((A)-(B)) r where (A), (B) and "r" are as defined below:

(a) Is the present value of all future guaranteed benefits at the date of valuation.

(b) Is the quantity PVFBax+t/ax:

Where PVFB is the present value of all benefits guaranteed at issue assuming future guaranteed maturity premiums are paid by the policyowner and taking into account all guarantees contained in the policy or declared by the insurer.

ax and ax+t are present values of an annuity of one per year payable on policy anniversaries beginning at ages x and x+t, respectively, and continuing until the highest attained age which a premium may be paid under the policy. The letter "x" is defined as the issue age and the letter "t" is defined as the duration of the policy.

The guaranteed maturity premium is calculated at issue based on all policy guarantees at issue, excluding guarantees linked to an external referent. The guaranteed maturity premium for fixed premium universal life insurance policies shall be the premium defined in the policy which at issue provides the minimum policy guarantees.

The letter "r" is equal to one (1), unless the policy is flexible premium policy and the policy value is less than the guaranteed maturity fund, in which case "r" is the ratio of the policy value to the guaranteed maturity fun.

The guaranteed maturity fund at any duration is that amount which, together with future guaranteed maturity premiums, will mature the policy based on all policy guarantees at issue.

(c) Is the quantity r((a)-(b))ax+t/ax where (a)-(b) is as described in KRS 304.6-150(1) for the plan of insurance defined at issue by the guaranteed maturity premiums and all guarantees contained in the policy or declared by the insurer.

ax+t and ax are defined in (1)(b) above.

(d) Is the sum of any additional quantities analogous to (1)(c) which arise because of structural changes in the policy, with each quantity being determined on a basis consistent with that of (1)(c) using the maturity date in effect at the time of the change.

The guaranteed maturity premium, the guaranteed maturity fund and (1)(b) above shall be recalculated to reflect any structural changes in the policy. This recalculation shall be done in a manner consistent with descriptions above.

Future guaranteed benefits are determined by (1) projecting the greater of the guaranteed maturity fund and the policy value, taking into account future guaranteed maturity premiums, if any, and using all guarantees of interest, mortality and expense deductions, contained in the policy or declared by the insurer; and (2) taking into account any benefits guaranteed in the policy or by declaration which do not depend on the policy value.

All present values shall be determined using (i) an interest rate or rates specified by KRS 304.6-145(2) for policies issued in the same year; (ii) the mortality rates specified by the KRS 304.6-140 for policies issued in the same year or contained in such other table as may be approved by the executive director for this purpose; and (iii) any other tables needed to value supplementary benefits provided by a rider which is being valued together with the policy

(2) Alternative Minimum Reserve. If, in any policy year, the guaranteed maturity premium on any universal life insurance policy is less than the valuation net premium for such policy, calculated by the valuation method actually used in calculating the reserve but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such contract shall be the greater of (a) or (b), where (a) or (b) below:

(a) Is the reserve calculated according to the method, the mortality table and the rate of interest actually used; and

(b) Is the reserve calculated according to the method actually used but using the minimum valuation standards of mortality and rate of interest and replacing the valuation net premium by the guaranteed maturity premium in each policy year for which the valuation net premium exceeds the guaranteed maturity premium.

For universal life insurance reserves on a net level premium basis, the valuation net premium is PVFB ax and for reserves on a Executive Directors Reserve Valuation Method, the valuation net premium is PVFB+(a)-(b)

ax ax

Section 4. Nonforfeiture. (1) Minimum cash surrender values for flexible premium universal life insurance policies. minimum cash surrender values for flexible premium universal life insurance policies shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately. The following requirements pertain to a basic policy and any benefits and riders for which premiums are not paid separately. The minimum cash surrender value before adjustment for indebtedness and dividend credits available on a date as of which interest is credited to the policy shall be equal to the accumulation to that date of the premiums paid minus the accumulations to that date of: (i) the benefit charges, (ii) the averaged administrative expense charges for the first policy year and any insurance-increase years, (iii) actual administrative expense charges for other years, (iv) initial and additional acquisition expense charges not exceeding the initial or additional expense allowances, respectively,

(v) any service charges actually made excluding charges for cash surrender or election of a paid-up nonforfeiture benefit and

(vi) any deductions made for partial withdrawals; all accumula-

tions being at the actuarial rate or rates of interest at which interest credits have been made unconditionally to the policy or have been made unconditionally, but for which the conditions have since been met, and minus any unamortized unused initial and additional expense allowances. Interest on the premiums and on all charges referred to in items (i) through (iv) above shall be accumulated from and to such dates as are consistent with the manner in which interest is credited in determining the policy value. The benefit charges shall include the charges made for mortality and any charges made for riders or supplementary benefits for which premiums are not paid separately. If benefit charges are substantially level by duration and develop low or no cash values, then the executive director shall have the right to require higher cash values unless the insurer provides adequate justification that the cash values are appropriate in relation to the policy's other characteristics. The administrative expense charges shall include charges per premium payment, charges per dollar of premium paid, periodic charges per thousand dollars of insurance, periodic per policy charges, and any other charges permitted by the policy to be imposed without regard to the policyowner's request for services. The averaged administrative expense charges for any year shall be those which would have been imposed in that year if the charge rate or rates for each transaction or period within the year had been equal to the arithmetic average of the corresponding charge rates which the policy states will be imposed in policy years two (2) through twenty (20) in determining the policy value. The initial acquisition expense charges shall be the excess of the expense charges, other than service charges, actually made in the first policy year over the averaged administrative expense charges for that year. Additional acquisition expense charges shall be the excess of the expense charges, other than the service charges, actually made in an insurance-increase year over the averaged administrative expense charges for that year. An insurance-increase year shall be the year beginning on the date of increase in the amount of insurance by policyowner request or by the terms of the policy. Service charges shall include charges permitted by the policy to be imposed as the result of a policyowner's request for a service by the insurer or of special transactions. The initial expense allowance shall be the allowance provided by KRS 304.15-342(1) for a fixed premium, fixed benefit endowment policy with a face amount equal to the initial face amount of the flexible premium universal life insurance policy, with level premiums paid annually until the highest attained age at which a premium may be paid under the flexible premium universal life insurance policy, and maturing on the latest maturity date permitted under the policy. If there is no maturity date in the policy, then the highest age in the valuation mortality table shall be used. The unused initial expense allowance shall be the excess of the initial expense allowance over the initial acquisition expense charges as defined above. If the amount of insurance is subsequently increased upon request of the policyowner or by the terms of the policy, an additional expense allowance and an unused additional expense allowance shall be determined on a basis consistent with the above and with KRS 304.15-342(5) using the face amount and the latest maturity date permitted at the time under the policy. The unamortized unused initial expense allowance during the policy year beginning on the policy anniversary at age x+t where "x" is the same issue age shall be the unused initial expense allowance multiplied by ax+t where ax+t and ax are present values of an annuity of one (1) per year payable on policy anniversaries beginning at ages x+t and x, respectively, and continuing until the highest attained age at which a premium may be paid under the policy, both on the mortality and interest bases guaranteed in the policy. An unamortized unused additional expense allowance shall be the unused additional expense allowance multiplied by a similar ratio of annuities, with ax replaced by an annuity beginning on the date as of which the additional expense allowance was determined.

(2) Minimum Cash Surrender Values for Fixed Premium Universal Life Insurance Policies. For fixed premium universal life insurance policies, the minimum cash surrender values shall be determined separately for the basic policy and any benefits and riders for which premiums are paid separately. The following requirements pertain to a basic policy and any benefits and riders for which premiums are not paid separately. The minimum cash surrender value before adjustment for indebtedness and dividend credits available on a date as of which interest is credited to the policy shall be equal to [(A)-(B)-(C)-(D)], where:

(a) Is the present value of all future guaranteed benefits.

(b) Is the present value of future adjusted premiums. The adjusted premiums are calculated as described in KRS 304.15-342.The nonforfeiture net level premium is equal to the quantity PVFB, ax:

Where PVFB is the present value of all benefits guaranteed at issue assuming future premiums are paid by the policyowner and all guarantees contained in the policy or declared by the insurer.

ax is the present value of an annuity of one per year payable on policy anniversaries beginning at age x and continuing until the highest attained age at which a premium may be paid under the policy

(c) Is the present value of any quantities analogous to the nonforfeiture net level premium which arise because of guarantees declared by the insurer after the issue date of the policy. ax shall be replaced by an annuity beginning on the date as of which the declaration became effective and payable until the end of the period covered by the declaration.

(d) Is the sum of any quantities analogous to (B) which arise because of structural changes in the policy.

Future guaranteed benefits are determined by (1) projecting the policy value, taking into account the future premiums, and using all guarantees of interest, mortality, expense deductions, etc., contained in the policy or declared by the insurer; and (2) taking into account any benefits guaranteed in the policy or by declaration which do not depend on the policy value.

All present values shall be determined using (i) an interest rate specified by KRS 304.15-342(9) for policies issued in the same year and (ii) the mortality rates specified by the KRS 304.15-342(8) for policies issued in the same year or contained in such other table as may be approved by the executive director for this purpose.

(3) Minimum Paid-Up Nonforfeiture Benefits If a universal life insurance policy provides for the optional election of a paid-up nonforfeiture benefit, it shall be such that its present value shall be at least equal to the cash surrender value provided for by the policy on the effective date of the election The present value shall be based on mortality and interest standards at least as favorable to the policyowner as (1) in the case of a flexible premium universal life insurance policy, the mortality and interest basis guaranteed in the policy for determining the policy value, or (2) in the case of a fixed premium policy the mortality and interest standards permitted for paid-up nonfeiture benefits by KRS 304.15-342(8) and (9). In lieu of the paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits, or, if applicable, a greater amount or earliest payment of endowment benefits.

Section 5. Mandatory Policy Provisions. The policy shall provide the following:

(1) The policy owner shall be sent, at least annually, a report which will inform the policyowner of the status of the policy. The end of the current report period shall not be more than three months prior to the date of the mailing of the report. Specific requirements of this report are detailed in Section 7 of this administrative regulation.

(2) Notice that the policyholder may request an illustration of current and future benefits and values.

(3) Guarantees of minimum interest credits and maximum mortality and expense charges. All values and data shown in the policy shall be based on guarantees. No figures based on nonguarantees shall be included in the policy.

(4) A general description of the calculation of cash surrender values including the following information:

(a) The guaranteed maximum expense charges and loads.

(b) Any limitation on the crediting of additional interest. Interest credits shall not remain conditional for a period longer than twenty-four (24) months.

(c) The guaranteed minimum rate or rates of interest.

(d) The guaranteed maximum mortality charges.
(e) Any other guaranteed charges.
(f) Any surrender or partial withdrawal charges.

(5) If the policyowner has the right to change the basic coverage, any limitation on the amount or timing of such change shall be stated in the policy. If the policyowner has the right to increase the basic coverage, the policy shall state whether a new period of contestability or suicide is applicable to the additional coverage.

(6) Written notice to be sent to the policyowner's last known address at least thirty (30) days prior to termination of coverage. A flexible premium policy shall provide for a grace period of at least thirty (30) days after lapse. Unless otherwise defined in the policy, lapse shall occur on that date on which the net cash surrender value first equals zero.

(7) If there is a misstatement of age or sex in the policy, the amount of death benefit shall be that which would be purchased by the most recent mortality charge at the correct age or sex. The executive director may approve other methods which are deemed satisfactory.

(8) If a policy provides for a maturity date, end date, or similar date, then the policy shall also contain a statement, in close proximity to that date, that it is possible that coverage may not continue to the maturity date even if scheduled premiums are paid in a timely manner.

Section 6. Disclosure of information about the policy being applied for shall follow the standards in 806 KAR 12:140.

Section 7. Periodic Disclosure to Policyowner. (1) The policy shall provide that the policyowner shall be sent, without charge at least annually, a report which shall inform the policyowner of the status of the policy. The end of the current report period shall not be more than three (3) months prior to the date of the mailing of the report.

(2) The report shall include the following:
(a) The beginning and end of the current report period;
(b) The policy value at the end of the previous report period and at the end of the current report period;
(c) The total amounts which have been credited or debited to the policy value during the current report period, identifying each by type;
(d) The current death benefit at the end of the current report period on each life covered by the policy;
(e) The net cash surrender value of the policy as of the end of the current report period;
(f) The amount of outstanding loans, if any, as of the end of the current report period;
(g) For fixed premium policies, if, assuming guaranteed interest, mortality and expense loads and continued scheduled premium payments, the policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report;
(h) For flexible premium policies, if, assuming guaranteed interest, mortality and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report.

Section 8. Interest-indexed Universal Life Insurance Policies. (1) Filing requirements. The following information shall be submitted in connection with any filing of interest-indexed universal life insurance policies. This information shall be submitted in addition to the requirements of KRS 304.14-120. All information received shall be treated confidentially to the extent permitted by law.

(a) A description of how the interest credits are determined, including:
1. A description of the index;
2. The relationship between the value of the index and the actual interest rate to be credited;
3. The frequency and timing of determining the interest rate; and
4. The allocation of interest credits, if more than one rate of interest applies to different portions of the policy value;

(b) The insurer's investment policy, which includes a description of the following:
1. How the insurer addressed the reinvestment risks;
2. How the insurer plans to address the risk of capital loss on cash outflows;
3. How often the insurer plans to address the risk that appropriate investments may not be available or not available in sufficient quantities;
4. How the insurer plans to address the risk that the indexed interest rate may fall below the minimum contractual interest rate guaranteed in the policy;
5. The amount and type of assets currently held for interest indexed policies;
6. The amount and type of assets expected to be acquired in the future;

(c) If policies are linked to an index for a specified period less than to the maturity date of the policy, a description of the method used to determine interest credits upon the expiration of such period;

(d) A description of any interest guarantee in addition to or in lieu of the index; and

(e) A description of any maximum premium limitations and the conditions under which they apply.

(2) Reporting Requirements

(a) Annually, every insurer shall submit a Statement of Actuarial Opinion by the insurer's actuary similar to the example contained in Section 8(3) of this administrative regulation.

(b) Annually, every insurer shall submit a description of the amount and type of assets currently held by the insurer with respect to its interest-indexed policies.

(c) Prior to implementation, every domestic insurer shall submit a description of any material change in the insurer's investment strategy or method of determining the interest credits. A change is considered to be material if it would affect the form or definition of the index or if it would significantly change the amount or type of assets held for interest-indexed policies.

(3) Statement of Actuarial Opinion for Interest-Indexed Universal Life Insurance Policies shall state as follows:

I,_____, am (position or relationship to insurer) for the XYZ Life Insurance Company (the Insurer) in the state of_____. (State of Domicile of Insurer) I am a member of the American Academy of Actuaries (or if not, state other qualifications to sign annual statement actuarial options). I have examined the interest-indexed universal life insurance policies of the Insurer in force as of December 31, 20XX, encompassing _____ number of policies and $_____ of insurance in force. I have considered the provisions of the policies. I have considered any reinsurance agreements pertaining to such policies, the characteristics of the identified assets and the investment policy adopted by the insurer as they affect future insurance and investment cash flows under such policies and related assets. My examination included such tests and calculations as I considered necessary to form an opinion concerning the insurance and investment cash flows arising from the policies and related assets. I relied on the investment policy of the Insurer and on projected investment cash flows as provided by _____, Chief Investment Officer of the Insurer. The tests were conducted under various assumptions as to future interest rates, and particular attention was given to those provisions and characteristics that might cause future insurance and investment cash flows to vary with changes in the level of prevailing interest rates. In my opinion, the anticipated insurance and investment cash flows referred to above make a good and sufficient provision for the contractual obligations of the Insurer under these insurance policies.

_____ Signature of Actuary.

Section 9. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on January 1, 2008.

JULIE MIX MCPEAK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary

For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 13, 2007
FILED WITH LRC: July 13, 2007 at 11 a.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation supplements existing regulations on life insurance policies to accommodate the development and issuance of universal life insurance policies, to provide for the valuation of policy benefits, to require annual written status reports, and to require actuarial certification that the insurance and investment cash flows are financially sound.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that universal life policies are developed in a financially sound manner and include annual disclosures to the policyowner.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation will create financial standards for developing universal life products, and require annual baseline status disclosure to the policy owner.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will create actuarial and contract provision standards for universal life policies, which should make those products stronger from a solvency perspective. It also provides for consumer protection disclosures about policy benefits which should help the consumer understand what the product does and does not include.
(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.
(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the approximately 520 insurers and, 43,000 agents that are licensed to offer life products in Kentucky.
(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to calculate life insurance values and reserves in accordance with standardized actuarial procedures, and, in some instances, to certify compliance with the regulation annually, using their existing actuarial resources.
(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): We requested that the industry provide us with information on the cost impact of this regulation. The Office of Insurance has not received a response to its request; therefore, the office assumes that because this is a national standard that insurers may already be complying with in other states, the cost impact is minimal.
(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This regulation is part of a package that standardizes life insurance regulation across the various states and should reduce the overall cost of doing business for regulated entities.
(5) Provide an estimate of how much it will cost to implement this regulation:
(a) Initially: The initial cost to implement this administrative regulation will be minimal.
(b) On a continuing basis: There should be no additional cost on a continuing basis to implement this administrative regulation.
(6) What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementing and enforcing this administrative regulation.
(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.
(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.
(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes
2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance as the implementer of the regulation will be impacted by this administrative regulation.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304 2-110.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.
(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.
(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.
(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.
Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Life Insurance Division
(Amended After Comments)

806 KAR 15:070. Annuity nonforfeiture.

RELATES TO: 304.15-365
STATUTORY AUTHORITY: KRS 304.2-110, 304.15-365
NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 authorizes the Executive Director of the Office of Insurance to

make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, KRS 304.1-010. KRS 304.15-365(7) authorizes the executive director to promulgate administrative regulations to implement the statute and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the executive director determines adjustments are justified. This administrative regulation adopts rules to implement the provisions of KRS 304.15-365(4)

Section 1. Definitions. (1) "Basis" means:

(a) When used in the context of an initial or redetermination method, the specified period over which an average is computed that produces the value of the five-year Constant Maturity Treasury (CMT) Rate. The same basis shall apply to all equity-indexed benefits and the non equity-indexed benefit, if any.

1. The basis may use a specified period that is determined by the level of change in the CMT rate, or any other date dependent methodology adopted by the NAIC and approved by the executive director. A specifically excluded method is one that defines the nonforfeiture rate as the lowest rate in a specified time period. A method based upon changes in CMT levels must move up or down in an identical manner with changes in interest rates, subject to statutory minimums and maximums.

2. If the basis uses a specified period determined by the level of change in the CMT rate:

a. The nonforfeiture rate applicable at the time this subsection is first utilized for a contract form shall be determined by a method using a specified period or another approved date dependent methodology.

b. A symmetrical range shall be defined that will determine when the rate shall be updated. The maximum allowable range shall be plus or minus fifty (50) basis points.

c. At the beginning of each modal period, a potential nonforfeiture rate shall be calculated using the method in Subsection (1)(a)2.a. of this section, without incorporating any caps or floors.

d. If the difference between the potential nonforfeiture rate and the current initial nonforfeiture rate is less than or equal to the range, the current nonforfeiture rate shall not be updated.

e. If the difference between the potential nonforfeiture rate and the current nonforfeiture rate is more than the range, the current nonforfeiture rate shall be updated to be equal to the potential nonforfeiture rate adjusted for rounding and any caps or floors.

(b) When used in the context of equity-indexed benefits, the point in time used for establishing the parameters incorporated into the calculation of the value of the equity-indexed options. These parameters include the risk free rate, dividend yield, index volatility, prior index values if the option is path dependent, and any other relevant parameters.

(2)(a) "Equity-indexed benefits" means a benefit in an annuity contract in which the value of the benefit is determined using an interest crediting rate based on the performance on an equity-based index and contract parameters.

(b) "Equity indexed benefits" does not mean variable benefits of separate account variable annuities and indexed guaranteed separate account contracts purchased by institutional buyers.

(3) "Executive director" is defined in KRS 304.1-050(1).

(4) "Index term" means each period of time until the next indexed interest crediting date.

(5) "Initial method" means the basis upon which the initial nonforfeiture rate is established and the period for which it applies. The period may last for the entire duration of the contract.

(6) "Initial nonforfeiture rate" means the nonforfeiture rate applicable at contract issue.

(7) "Minimum nonforfeiture amount" is defined in KRS 304.15-365(4)(a).

(8) "Modal period" means the period the company specifies during which the current nonforfeiture rate will remain fixed.

(9) "Nonforfeiture rate" is defined in KRS 304.15-365(5).

(10) "Redetermination method" means the redetermination date, basis and period for all future redetermination nonforfeiture rates.

(11) "Redetermination nonforfeiture rate" means the nonforfeiture rate applicable at redetermination.

Section 2. Initial Method. (1) The initial method shall be filed with the executive director in accordance with jurisdictional filing and approval requirements.

(2) Changes to the initial method are allowed once per calendar year. Any changes to the initial method shall be filed with the executive director in accordance with KRS 304.14-120. A change in initial method would be applicable only to new contracts or new certificates issued subsequent to the effective date of the change in method.

(3) The initial method is not required to be disclosed in the contract form.

(4) The initial nonforfeiture rate is not required to be disclosed in the contract form unless redetermination is used.

(5) The minimum nonforfeiture parameters need not be disclosed in the contract unless they are utilized in the calculation of the guaranteed minimum value of the contract.

Section 3. Redetermination Method. (1) If redetermination is used, the method shall be disclosed in the contract form or certificate.

(2) Changes in the redetermination method for future issues or certificates shall be filed in accordance with 304.14-120.

Section 4. Nonforfeiture Rate and Minimum Nonforfeiture Amount. (1) An annuity contract or certificate without an equity-indexed benefit shall have one nonforfeiture rate and one minimum nonforfeiture amount applicable to the entire contract.

(2) An annuity contract or certificate with equity-indexed benefits may have more than one nonforfeiture rate applicable to the contract or certificate subject to the following:

(a) If the contract has a non equity-indexed benefit, the nonforfeiture interest rate applicable to the non equity-indexed benefit shall be determined in compliance with KRS 304.15-365(5) without any consideration of any equity indexed feature.

(b) If an additional reduction is elected for equity-indexed benefits, reduced nonforfeiture interest rates may apply to each equity-indexed benefit for which the additional reduction is elected in compliance with KRS 304.15-365(6) and Section 5 of this administrative regulation.

(c) The minimum nonforfeiture amount for the contract is determined by calculating a nonforfeiture amount, without any reduction for indebtedness to the company on the contract including interest due and accrued on the indebtedness, for each equity-indexed and non equity-indexed benefit using the nonforfeiture interest rates described in this subsection, summing the results, and then deducting any indebtedness to the company on the contract including interest due and accrued on the indebtedness.

(d) When contract value is transferred:

1. From a benefit, the benefit's minimum nonforfeiture amount is reduced by the benefit's minimum nonforfeiture amount prior to the transfer multiplied by the proportion of the benefit's contract value that is transferred,

2. To a benefit, the benefit's minimum nonforfeiture amount is increased by the sum of all reductions in minimum nonforfeiture amounts determined under subparagraph 1 of this paragraph.[, ~~above,~~] multiplied by the proportion of total contract value that is transferred to that benefit;

3. For purposes of the calculations specified in subparagraphs 1. and 2. of this paragraph [~~above,~~] the contract value must first be reduced by any fees associated with the transfer.

(e) In the case of a withdrawal from a benefit in which the amount of withdrawal exceeds the benefit's nonforfeiture amount, the insurer shall treat the excess withdrawal in a manner at least as favorable to the contract holder as deducting the excess withdrawal from the nonforfeiture amounts of other benefits in order from lowest to highest nonforfeiture interest rate.

(f) Any contract charge or premium taxes paid by the company must be allocated to a benefit's minimum nonforfeiture amount based on the percentage of that benefit's contract value to the total contract value.

Section 5. Equity-indexed Benefits. (1) If a company chooses

to take the additional reduction for an equity-indexed benefit, the company shall prepare a demonstration showing compliance with KRS 304.15-365(6).

(2) To demonstrate compliance a company shall:

(a) Calculate the annualized option cost for the equity-indexed benefit in the form of basis points for the entire Index Term as of the beginning of the Index Term.

1. In making the calculation, a company shall:

a. Use the equity-indexed benefit's guaranteed product features.

b. Use a basis representative of the point in time at the beginning of the current index term for the option cost. The company shall not change this basis during the index term.

c. Calibrate the method and parameters for the option cost to capital markets based option pricing

2. A company shall not make adjustments for persistency, death, utilization.

(b) If the annualized option cost for the equity-indexed benefit is twenty-five (25) basis points or more, then the equity-indexed benefit provides substantive participation under KRS 304.15-365(6) and the company may take a reduction equal to the lesser of one hundred (100) basis points or the annual cost basis value.

(c) The company shall prepare an actuarial certification signed by a member of the American Academy of Actuaries that the reduction complies with KRS 304.15-365(6) at the time that the contract form is filed and submitted.

(d) The company shall annually prepare an actuarial certification in accordance with KRS 304.15-365(6) signed by a member of the American Academy of Actuaries with regard to ongoing compliance and submit it in conjunction with the filing of the annual statement.

(3) If the executive director determines that the additional reduction of up to one (100) hundred basis points for equity-indexed benefits has been inappropriately taken, the executive director may require the recalculation of all values for all affected policyholders without all or part of the additional reduction.

Section 6. Effective Date. The requirements, implementation, and enforcement of this administrative regulation shall begin on January 1, 2008 [~~December 1, 2007~~].

JULIE MIX MCPEAK, Executive Director
TIMOTHY J. LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 13, 2007
FILED WITH LRC: July 13, 2007 at 11 a.m.
CONTACT PERSON: DJ Wasson, Kentucky Office of Insurance, P. O. Box 517, Frankfort, Kentucky 40602, phone (502) 564-0888, fax (502) 564-1453.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: DJ Wasson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth actuarial standards for minimum nonforfeiture benefits for annuities to implement the provisions of KRS 304.15-365.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to set standards in accordance with KRS 304.15-365 and to provide for an actuarial certification of compliance.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304.2-110 authorizes the executive director to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. This administrative regulation implements the provisions of KRS 304.15-365 and standardizes the calculation of values and sets minimum nonforfeiture amounts for annuities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will set the baseline actuarial requirements for annuities and require an actuarial certification of compliance with the regulation which adds a layer of consumer protection.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the insurers and agents that are licensed to offer annuity products in Kentucky.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Regulated entities will be required to calculate the minimum nonforfeiture benefits for annuities in accordance with this regulation, using their existing actuarial resources.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Entities will not incur any additional cost as this regulation is a national standard.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This regulation is part of a package that standardizes regulation across the various states and should reduce the overall cost of doing business for regulated entities.

(5) Provide an estimate of how much it will cost to implement this regulation:

(a) Initially: The initial cost to implement this administrative regulation will be minimal.

(b) On a continuing basis: There should be no additional cost on a continuing basis to implement this administrative regulation.

What is the source of funding to be used for the implementation and enforcement of this administrative regulation: The budget of the Kentucky Office of Insurance will be used for implementing and enforcing this administrative regulation.

(6) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment. There will be no increase in fees or funding necessary to implement this administrative regulation.

(7) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly establish any new fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies equally to all insurance companies offering life insurance in Kentucky.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance as the implementer of the regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304 2-110.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This regulation should be essentially revenue neutral.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties,

fire departments, or school districts) for the first year? This regulation should be essentially revenue neutral.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation should remain essentially revenue neutral.

(c) How much will it cost to administer this program for the first year? This regulation should be essentially revenue neutral.

(d) How much will it cost to administer this program for subsequent years? This regulation should remain essentially revenue neutral.

Note If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:300. Standards for child-caring facilities.

RELATES TO: KRS 2.015, 17.165, 17.500(8), 164.740, 189.125(3), 198B.050-198B.090, 199.011(2), (3), (4), (6), (7), (10), (11), 199.640, 199.650, 199.660, 199.670, 211.350-211.380, 214.034(4), Chapter 271B.8, 273.161(7), 600.020(23), 605.080(3), 605.090(1), 610.110(6), 615.010, 615.030, 615.040, 620.020, 620.030, 620.090(2), 620.140(1), 620.230(3), 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5), 199.645, 605.150, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary for the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 199.640(5) authorizes the cabinet [for Health and Family Services] to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards of care and service for child-caring facilities.

Section 1. Definitions. (1) "Aftercare" means a service provided to a child after discharge from a child-caring facility.

(2) "Board of directors" is defined at KRS 273.161(7).

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Case" means an individual child or family being provided services by a social worker or counselor.

(5) "Chemical restraint" means a drug used as a restraint that is a medication used to control behavior or to restrict the patient's freedom of movement and is not a standard treatment for the patient's medical or psychiatric condition.

(6) "Child" is defined at KRS 199.011(4) and[,] 600.020(8) and may include:

(a) An extension or reinstatement of commitment in accordance with[, and] 610.110(6) or 620.140(1)(d); or

(b) A child who meets the exceptions to the age of majority in accordance with KRS 2.015.

(7) "Child-caring facility" is defined at KRS 199.011(6).

(8) "Child-placing agency" is defined at KRS 199.011(7).

(9) "Child-caring program" means the method of delivering a child-caring service.

(10) "College or university" means an institution accredited by one (1) of the eleven (11) regional accrediting organizations recognized by the U.S. Department of Education, Office of Postsecondary Education, and

(a) For a Kentucky institution, licensed by the Kentucky Council on Postsecondary Education or the Kentucky Board for Proprietary Education, and

(b) For an out-of-state institution, licensed in its home state if licensure is required in that state.

(11) "Community resource" means a service or activity available in the community that supplements those provided by the child-caring facility or child-placing agency in the care and treatment of a child.

(12) "Corporal physical discipline" is defined at KRS 199.640(6).

(13) "Department" means the Department for Community Based Services.

(14) "Crisis intervention unit" means a unit that serves a child in need of short-term intensive treatment, to avoid risk of placement to a higher level of care.

(15) "Direct child-care staff" means an employee or volunteer providing face-to-face care and supervision of a child.

(16) "Discharge" means a planned release of a child from a program.

(17) [~~"Division" means the Division of Licensed Child Care.~~

~~(18)~~] "Emergency discharge" means the release of a child from a program as a result of a circumstance that presents a risk to the health or safety of a child.

(18) [~~(19)~~] "Emergency shelter" is defined at KRS 600.020(23).

(19) [~~(20)~~] "Emergency shelter child-caring facility" means a child-caring facility that meets the requirements of 922 KAR 1:380.

(20) [~~(21)~~] "Executive director" means the person employed by the board of directors to be responsible for the administration and management of a child-caring facility.

(21) [~~(22)~~] "Group home" is defined at KRS 199.011(10).

(22) "Independent living services" means services provided to an eligible child, as described in Section 8 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(23) "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(24) "Indoor living area" means an area in the child-caring facility that is separate from a hallway, bedroom, kitchen, stairway, vestibule, bathroom, closet, unfinished basement, or attic.

(25) "Institution" is defined at KRS 199.011(11).

(26) "Living unit" means a building or part thereof in which a child resides, not exceeding sixteen (16) beds.

(27) "Permanence" is defined at KRS 620.020(8).

(28) "Physical management" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement in order to maintain a safe environment for the child and others.

(29) "Residential child-caring facility" means a child-caring facility that meets the standards established in 922 KAR 1:390.

(30) [~~(29)~~] "Residential treatment program" means a residential child-caring facility that meets the treatment program requirements of 922 KAR 1:390, Section 4.

(31) [~~(30)~~] "Service coordination" means a service provided by the individual on the treatment team who has responsibility for the coordinated implementation of the child's ITP.

(32) "Sex crime" is defined at KRS 17.500(8).

(33) [~~(31)~~] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and his social environment.

(34) [~~(32) "Therapeutic hold" means a technique used by a specially-trained staff member for the purpose of restricting a child's freedom of movement, in order to maintain a safe environment for the child and others.~~

~~(33)~~] "Time-out" means a treatment intervention utilized by child-caring staff to separate a child from others in a nonsecure area for a time limited period, in order to permit the child to regain control over his behavior.

(35) [~~(34)~~] "Treatment" means individualized management and care of a child, utilizing professionally credentialed and certified staff and a component of the treatment environment to assist the child in resolving his emotional conflict or behavioral disorder.

(36) [~~(35)~~] "Treatment team" means a representative group of people who provide services to the child and the child's family.

(37) [~~(36)~~] "Unplanned discharge" means the release of a child from the child-caring facility that is not in accordance with the ITP.

(38) [~~(37)~~] "Youth wilderness camp" means a specific program of a child-caring facility that is designed to provide an outdoor experience consistent with a child's ITP.

Section 2. Operations and Services. (1) This administrative regulation establishes standards for the following child-caring facilities:

(a) An emergency shelter child-caring facility, also governed by 922 KAR 1:380;

(b) An emergency shelter child-caring facility with treatment, also governed by 922 KAR 1:380, Section 3;

(c) A residential child-caring facility, also governed by 922 KAR 1:390, including:

1. A group home; and

2. An institution.

(d) A residential treatment program, also governed by 922 KAR 1:390, Section 4, including:

1. A crisis intervention unit, also governed by 922 KAR 1:390, Section 5,

2. A group home, also governed by 922 KAR 1:390, Section 7;

3. An institution; and

(e) A youth wilderness camp program, also governed by 922 KAR 1:460.

(2) Except for a child-caring facility maintaining a license prior to October 16, 2000, a child-caring facility shall not be located or operated on the grounds of a psychiatric hospital.

Section 3. Administration and Operation. (1) The licensing procedure for a child-caring facility shall:

(a) Be administered as established in 922 KAR 1:305; and

(b) Based upon the services provided, meet the requirements of this administrative regulation and 922 KAR 1:380, 922 KAR 1:390, or 922 KAR 1.460

(2) Board of directors.

(a) The child-caring facility shall have a board of directors in accordance with KRS Chapter 271B, Subtitle 8.

(b) The board of directors shall:

1. Consist of at least seven (7) members;

2. Meet at least quarterly;

3 Cause minutes of each meeting to be taken and kept in written form;

4. Have the authority and responsibility to ensure continuing compliance with this administrative regulation and other relevant federal, state, and local law;

5. Have procedures in place to insure that its staff receives ongoing training as defined in subsection (6)(o) of this section;

6. Obtain a criminal records check of prior convictions of the executive director prior to employment; and

7. Approve a mission statement delineating

a. The purpose;

b. Objective; and

c. Scope of service to be provided.

(3) Executive director.

(a) Duties of the executive director shall be determined by the board of directors.

(b) The executive director shall be responsible for the child-caring facility and its affiliates in accordance with the child-caring facility's written policy.

(c) If the executive director is not on the premises, a designated staff person shall be responsible for the day-to-day operation of the child-caring program.

(d) The executive director shall oversee and report to the board on a quarterly basis, providing an evaluation of program services addressing measurable goals, staff training, and incident reports.

(e) The criteria and process of the quarterly evaluation shall be approved by the board.

(4) Staff qualifications

(a) A person employed as an executive director after the effective date of this administrative regulation shall possess the following qualifications:

1. A master's degree in a human services field from a college or university, supplemented by two (2) years of work experience in **business administration or** management of a human services program related to working with families and children; or

2. A bachelor's degree in a human services field from a college or university, supplemented by four (4) years work experience in management of a human services program related to working with families and children.

(b) A treatment director or person employed by the child-caring facility in a position responsible for supervising, evaluating, or monitoring social work and related activities shall [~~possess at least~~]:

1. Hold at least a master's degree in a human service discipline; and

2. Within two (2) years of the effective date of this administrative regulation, have at least five (5) years experience in mental health treatment of children with emotional or behavioral disabilities and their families and be responsible for the:

a. Supervision;

b. Evaluation; and

c. Monitoring of the:

(i) Treatment program;

(ii) Social work, and

(iii) Other treatment staff.

(c) A residential child-caring facility providing a treatment service for more than thirty (30) children shall employ a separate treatment director other than the executive director.

(d) A residential child-caring facility providing a treatment service for thirty (30) or fewer children may utilize the executive director in a dual role as treatment director, if at least fifty (50) percent of his duties are spent supervising the treatment program. If an employee serves as both executive director and treatment director, the higher staff qualification shall apply.

(e) [~~A master's degree in the human services area from a college or university including the areas of:~~

~~a. Social work;~~

~~b. Sociology;~~

~~c. Psychology;~~

~~d. Guidance and counseling;~~

~~e. Pastoral counseling and religion, and~~

~~2. Two (2) years work experience in a human services field.~~

~~(c)~~] An employee responsible for social work, counseling, or planning and coordinating these services to a child shall have at least a bachelor's degree in a human services field from a college or university.

(f) [~~(d)~~] A person employed in a position responsible for supervising, evaluating, or monitoring the daily work of direct child-care staff shall possess at least:

1. Two (2) years of education from a college or university and two (2) years of work experience in a child-caring facility; or

2. A high school diploma, or an equivalence certificate, and at least five (5) years work experience in a child-caring facility.

(g) [~~(e)~~] A person employed in a position responsible for the daily direct care or supervision of a child shall possess at least a high school diploma or equivalency certificate.

(h) [~~(f)~~] If an employee is responsible for varied job responsibilities and falls within more than one (1) of the categories specified, the employee shall meet the more rigorous qualifications.

(i) [~~(g)~~] A child-caring facility contracting for the services of a social worker or treatment director not on the staff of the child-caring facility shall document that the social worker or treatment director meets the qualifications established in paragraphs (b) and (e) [~~(c)~~] of this subsection. An agreement for provision of service shall be on file at the child-caring facility, and shall specify the qualifications of the social worker or social services professional.

(5) Staffing requirements.

(a) The child-caring facility shall have:

1 A written policy describing a child-to-direct-child-care staff ratio that is consistent with the staff-to-child ratios required in paragraph (b) of this subsection; and

2. An explanation of the assignment of staff in order to:

a. Ensure the health and safety of a child; and

b. Implement the child-caring program.

(b) Staff-to-child ratios for each type of facility shall be as follows:

1. An emergency shelter child-caring facility: one (1) staff member to ten (10) children **at all times**.

2. An emergency shelter child-caring facility with treatment.

one (1) staff member to six (6) children at all times.

3 A residential child-caring facility:

a. One (1) staff member to ten (10) children age six (6) and over; or

b. One (1) staff member to five (5) children under age six (6).

4. A residential child-caring facility with treatment:

a. One (1) staff member to six (6) children; and

b. One (1) staff member to twelve (12) children during sleeping hours.

5. A crisis intervention unit:

a. One (1) staff member to four (4) children; and

b. One (1) staff member to six (6) children during sleeping hours.

6. A group home:

a. One (1) staff member to four (4) children; and

b. One (1) staff member to accompany a child while away from the home.

7. An institution: one (1) staff member to ten (10) children.

8. A youth wilderness camp program to include:

a. A base camp:

(i) One (1) staff member to four (4) children age eleven (11) and (12) years old; and

(ii) One (1) staff member to six (6) children age thirteen (13) and above; and

b. A field program, for which two (2) staff members shall be on location at all times:

(i) One (1) staff for three (3) children age eleven (11) and (12) years old;

(ii) One (1) staff for four (4) children age thirteen (13) and above;

(iii) Group size, including staff, shall not exceed more than twelve (12) at one (1) time;

(iv) In a mixed gender group, one (1) woman and one (1) man, with one (1) staff member remaining awake during sleeping hours;

(v) A staff-to-child ratio shall be based on the age of the youngest child; and

(vi) A volunteer shall not be included in the staff-to-child ratio.

(c) There shall be at least one (1) staff member present in each child-caring facility building if a child is present.

(d) At least one (1) staff member certified in first aid and cardiopulmonary resuscitation shall be on the premises, if a child is present.

(e) The child-caring facility shall have a written work schedule and a policy that provides for utilization of relief staff.

(f) The child-caring facility shall employ an individual who is responsible for the overall planning and coordinating of social services to a family and child.

(g) Social services staff shall not carry a caseload of more than fifteen (15) children and their families.

(6) Personnel policy.

(a) A child-caring facility shall have and comply with a written personnel policy and procedure.

(b) An employee of the child-caring facility shall be at least eighteen (18) years of age.

(c) The employment of an individual shall be governed by KRS 17.165, with regard to a criminal record check.

(d) A new criminal record check shall be completed at least every two (2) years on each employee or volunteer

(e) An employee under indictment or legally charged with a violent or sex crime as defined in KRS 17.165 shall be immediately removed from contact with a child within the child-caring facility until the employee is cleared of the charge.

(f) Each employee or volunteer shall submit to a check of the central registry described by 922 KAR 1.470. An individual listed on the central registry shall not be a volunteer at or be employed by a child-caring facility.

(g) Each licensee shall report to the cabinet and each child-caring facility employee or volunteer shall report to the licensee or facility's director, an incident that occurs subsequent to the most recent central registry check, if the employee or volunteer:

1. Is the subject of a cabinet child abuse or neglect investigation; or

2. Has been found by the cabinet or a court to have abused or neglected a child.

(h) An individual shall not be left alone in the presence of a child if a central registry check has not been completed.

(i) Determination by the cabinet of risk of potential harm by an employee to a child in a child-caring facility shall result in:

1. Investigation of the employee for evidence of child abuse or neglect; and

2. The removal of the employee from direct contact with a child pending:

a. The duration of the investigation; and

b. Completion of the administrative appeal process in accordance with 922 KAR 1.320

(j) A current personnel record shall be maintained for each employee, that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of a current registration, certification, licensure, and college credentials, if required by the position;

3. Record of ongoing participation in an agency staff development program as specified in paragraphs (n) and (o) of this subsection;

4. Record of performance evaluation;

5. Criminal records check as established in paragraph (c) of this subsection;

6. Documentation of a central registry check completed every two (2) years in accordance with 922 KAR 1:470,

7. Personnel action; and

8. Application for employment, [and] resume, or contract.

(k) A child-caring facility shall retain an employee personnel record for at least five (5) years after termination of employment.

(l) An employee shall document compliance with a requirement for meeting state or national professional standards, as set forth in the job description.

(m) The child-caring facility shall have a record of participation and successful completion of an ongoing staff and volunteer development program.

(n) The staff development program shall be under the supervision of a designated staff member; and

(o) Full-time direct child care staff shall have at least forty (40) hours, and part-time direct child care staff shall have at least twenty-four (24) hours, of training specific to task to be performed and of annual training in the following:

1. Emergency and safety procedure;

2. Principle and practice of child residential care;

3. Behavior management, including de-escalation training;

4. Physical management [~~Therapeutic hold~~] for a child-caring facility using the technique;

5 First aid; and

6. Personnel orientation.

(p) A volunteer who functions as a professional or direct staff member without compensation shall meet the same general requirements and qualifications.

(q) A child-caring facility using physical management [~~therapeutic hold~~] shall:

1. Develop and maintain clearly-written policy and procedure governing the use of physical management [~~therapeutic hold~~] of a child, including a requirement for a de-escalation plan, in accordance with 922 KAR 1.390, Section 4,

2. Require a staff member who conducts physical management [~~therapeutic hold~~], to complete at least sixteen (16) hours of annual training in approved methods of de-escalation and physical management [~~therapeutic hold~~] from a nationally-recognized accreditation organization approved by the cabinet, as part of the annual training established in paragraph (o) of this subsection, to include:

a. Assessing physical and mental status, including signs of physical distress;

b Assessing nutritional and hydration needs,

c. Assessing readiness to discontinue use of the intervention; and

d. Recognizing when medical or other emergency personnel are needed

(r) The program director shall review and analyze instances of physical management [~~therapeutic hold~~] in order to

1. Assure compliance with Section 5(2)(f) through (h) of this administrative regulation and the child-caring facility policy;

2. Provide documentation of a plan of action to prevent injury to a child or staff as a result of the use of physical management [~~therapeutic hold~~]; and

3. Review each incident no later than one (1) working day after its use.

(s) A child-caring facility shall develop and maintain clearly written policies and procedures governing professional boundaries for an employee or volunteer working with children.

(t) A child-caring facility shall develop and maintain clearly written policies and procedures governing smoking prohibitions, in accordance with 20 U.S.C. 7183 and 922 KAR 2:110, Section 3(10).

(7) Interstate placement.

(a) Before accepting a child from another state or placing a child in another state, the child-caring facility shall be in compliance with:

1. Applicable provisions of the Interstate Compact on Placement of Children, KRS 615.030, and 615.040; and

2. The Interstate Compact on Juveniles, KRS 615.010.

(b) If a child committed to the cabinet makes a brief visit out of state, not accompanied by child-caring facility personnel, the child-caring facility shall obtain prior consent from cabinet staff member responsible for the case.

(c) If an emergency placement of a child into a licensed child-caring facility is made, the placement source shall be responsible for compliance with KRS 615.030 to 615.040. If the receiving child-caring facility is aware of noncompliance by the placement source, the child-care facility shall notify the cabinet's interstate compact coordinator.

(8) Record retention.

(a) The child-caring facility shall retain all records, books, and reports related to financial conditions and status for auditing purposes for a minimum of five (5) years.

(b) Make available all books, records, and financial information for review, inspection, auditing, and photocopying by the cabinet or cabinet designee, authorized federal and state agency reviewers and auditors.

(9) A residential child-caring facility shall become accredited by a nationally recognized accreditation organization within two (2) years of initial licensure.

Section 4. Physical Plant. (1) A child-caring facility shall comply with applicable state and local law relating to:

(a) Construction;

(b) Sanitation, and

(c) Building maintenance.

(2) The child-caring facility shall conform to the Kentucky Standards of Safety in accordance with 815 KAR 10:060.

(3) A climate control system shall be provided as follows:

(a) A minimum temperature of sixty-five (65) degrees Fahrenheit maintained in occupied areas in cold weather conditions;

(b) In warm weather conditions and periods of extreme heat, an occupied area shall be properly ventilated;

(c) If not air-conditioned and the temperature in an occupied area exceeds eighty-five (85) degrees Fahrenheit, the child-caring facility director shall assure that the following occurs:

1. A fan is utilized to circulate air;

2. The child-caring facility is properly ventilated to outside air;

3. Ice water is readily available and served to residents; and

4. Staff frequently monitor residents for a sign or symptom of a heat-related illness.

(4) The water supply shall be from an approved source and easily available from the following:

1. Drinking fountain;

2. Refrigerator; or

3. Cold water tap.

(5) The plumbing and waste disposal systems shall comply with applicable provisions of the Uniform State Building Code, KRS 198B.050, and with laws regarding on-site sewage disposal, KRS 211.350 to 211.380, if applicable.

(6) Housekeeping and maintenance service.

(a) The building and its content shall be maintained in a clean and safe condition and in good repair.

(b) A maintenance plan shall be implemented.

(c) The child-caring facility shall ensure that the grounds and outdoor equipment are well kept and the exterior of the building is in good repair.

(d) The interior of the building and its content shall be in good repair.

(e) Garbage and trash shall be:

1. Stored in an area separate from those used for the preparation and storage of food;

2. Removed from the premises regularly; and

3. Placed in a container that is cleaned regularly.

(f) Insecticides, pesticides, and chemical poisons shall be plainly labeled and stored in a secure, locked area. Access shall be given to:

1. The facility's maintenance personnel; or

2. A pest control company with which the facility has a contract.

(7) Bedroom.

(a) A bedroom shall be:

1. Of adequate size to permit at least three (3) linear feet between each bed or set of bunk beds; and

2. Constructed to allow no more than four (4) residents per room.

(b) A bedroom for a child above age three (3) shall be equipped with an individual bed for each child that shall be:

1. Long and wide enough to accommodate the child's size;

2. Developmentally appropriate for the child; and

3. Equipped with a support mechanism and a clean mattress.

(c) A bed occupied by a child shall be placed so that the child shall not experience discomfort because of:

1. Proximity to a radiator or heat outlet; or

2. Exposure to drafts.

(d) Except for a sibling indicated in an ITP, there shall be separate sleeping quarters for boys and girls over the age of five (5).

(e) Storage [~~Closet space and drawer~~] space shall be provided for each child to accommodate his or her personal belongings in a:

1. Closet and drawers; or

2. Closet for the child's exclusive use and shelves within the closet.

(f) A child shall not be housed in a room, detached building, or enclosure that has not previously been inspected and approved for resident use.

(g) A child shall be provided with clean bed linens, laundered at least once a week, and a waterproof mattress covering.

(8) Indoor living area. An indoor living area shall have:

(a) At least thirty-five (35) square feet per child, and

(b) Comfortable furnishings adequate for the number of children served.

(9) Bathroom.

(a) For every six (6) children residing with the living unit, a living unit shall have a minimum of:

1. One (1) wash basin with hot and cold water,

2. One (1) flush toilet; and

3. One (1) bath or shower with hot and cold water.

(b) A child shall be provided with access to:

1. Toilet paper;

2. Towels;

3. Soap; and

4. Wastebasket.

(c) Each bathtub and shower shall have an enclosure or screen for individual privacy. If more than one (1) toilet is located in the same bathroom, each toilet shall:

1. Be partitioned, and

2. Include a door capable of remaining closed.

(d) A bathroom shall contain at least one (1) nondistorting mirror secured to the wall at a convenient height.

Section 5. Health, Safety, and Nutritional Requirements (1) Health.

(a) A child-caring facility shall have written policy and procedure for health and medical care, to include provisions for:

1. The care and disposition of an ill child; and

2 Emergency care.

(b) The service of a physician shall be made available to a child. If a service of a licensed physician is not available in the

community, the child-caring facility shall request the assistance of the:

1. County health department; or

2. The Department for Public Health, Division of Adult and Child Health Improvement.

(c) Staff shall follow licensed physician orders for:

1. Medicine;

2. Prescription; and

3 Medical care.

(d) Except for a weekend or holiday, within forty-eight (48) hours of admission to a child-caring facility, a child shall have:

1. An initial health screening for illness, injury, and communicable disease or other immediate needs, by a nurse or trained child-care staff;

2. After the initial health screening, a physical examination by a licensed physician or a qualified person under the supervision of a licensed physician, within two (2) weeks of admission, unless it has been documented that the child has received an examination during the past twelve (12) months; and

3. The examining professional shall report, in writing, observations and findings including:

a. Developmental history of the child, illnesses, operations, and immunizations if available to the physician;

b. A limitation the child may have that may prevent participation in an activity scheduled by the child-caring facility;

c. Visual and auditory examination results;

d. Recommendation and order for future care, treatment, and examinations;

e. TB skin test results, unless contraindicated by a qualified person under the supervision of a licensed physician; and

f. Other tests for communicable disease as indicated by the medical and social history of the child

(e) An annual physical examination shall be scheduled and documented as established in paragraph (d)3 of this subsection.

(f) Upon admission, the child-caring facility shall consult with a physician if there is evidence that the child may require medical attention.

(g) The child-caring facility shall develop a procedure for a child requiring a specific provision for an infectious medical condition.

(h) A separate health record shall be maintained for each child, kept on the premises, and be made available to a:

1. Physician;

2. Nurse; or

3. Designated staff member.

(i) The health record shall contain the following:

1. Copy of each physical examination, including any recommendations for treatment;

2. Previous and continuing health and medical history if available;

3. Record or report of each test, immunization, periodic reexamination, and physician order and instruction;

4. Report and date of each dental examination and treatment;

5. Authorization for regular and emergency medical, dental, and surgical care, signed at admission by the legal custodian;

6. Documentation of medication administered to the child; and

7. Documentation of a special provision made for the child in accordance with a physician's order.

(j) A child's medical need shall be provided for as recommended by a licensed physician.

(k) The facility shall keep an immunization certificate on file for each child, in accordance with KRS 214.034(4).

(l) If a child dies while in the care of a child-caring facility or in a home operated or supervised by the child-caring facility:

1. The child-caring facility shall immediately notify the:

a. County coroner;

b. Child's parent;

c. Guardian or custodian; and

d. Cabinet staff;

2. A verbal report of the death shall be made immediately to the Commissioner of the Department for Community-Based Services;

3. A written comprehensive report from the executive director outlining the incident shall be forwarded to the Office of the Commissioner, Department for Community-Based Services, on the next working day following the verbal report; and

4. If a child's death occurred as a result of alleged abuse or neglect, the executive director of the child-caring facility shall make verbal and written reports as required by KRS 620.030(1) and (2).

(m) Upon discharge, medical information shall follow the child if a release form has been obtained.

(n) With the exception of a dental examination that has been performed in the six (6) months preceding admission, the child-caring facility, within one (1) week after a child's admission, shall schedule an appointment for a dental examination. The facility shall ensure the treatment of emergency dental needs by a licensed dentist as they arise.

(o) A child age two (2) years and above shall be examined at least annually by a licensed dentist.

(p) The child-caring facility shall:

1. Document the information required by this subsection; and

2. Assure the confidentiality of the information.

(q) The child-caring facility shall maintain a continuous program of personal hygiene.

(2) Safety.

(a) A child shall be instructed in fire prevention, safety, and fire emergency procedures.

1. The child-caring facility shall maintain and post a current, written emergency fire evacuation plan and diagram to include:

a. An evacuation route and procedure; and

b. Location of fire extinguishers.

2. Documentation of fire evacuation plan and emergency drills shall be performed quarterly for each of the following emergency events:

a. Tornado and severe thunderstorm warning;

b. Flash flood if applicable;

c. Other emergency situations.

3. An emergency plan shall designate a suitable shelter in the event of an emergency.

(b) A child-caring facility with a swimming pool shall be staffed with a Red Cross certified lifeguard in accordance with 902 KAR 10:120, Section 13.

(c) Donated home processed foods shall be prohibited.

(d) Transportation.

1. If transportation is provided directly, contracted for, or arranged, a child-caring facility shall require:

a. Compliance with state laws pertaining to vehicles, drivers, and insurance;

b. A seat for each child and that the child remain seated while the vehicle is in motion;

c. A seat belt be used to secure the child;

d. A vehicle used to transport a child off campus to provide a seat for each passenger as manufactured standard equipment; [~~and~~]

e. That a child never be left unattended in a vehicle; and

f. Compliance with KRS 605.080(3) pertaining to court-ordered transportation.

2. The maximum number of children a driver shall supervise alone is four (4).

3. A child under forty (40) inches tall or forty (40) pounds in weight shall not be transported unless restrained in a safety seat approved in accordance with KRS 189.125(3).

4. A vehicle shall not pick up and deliver a child under the age of six (6) to a location that requires the child to cross a street or highway unless the child is accompanied by an adult.

5. If transportation is provided by a means other than licensed public transportation:

a. The vehicle shall be maintained in a safe mechanical and operable condition;

b. A thorough inspection of the vehicle shall be made and documented by a qualified mechanic at least annually; and

c. If the driver is not in his seat, the motor shall be turned off, keys removed, and brake set.

(e) A child with a history of aggressive behavior or sexual acting-out shall be assessed by the treatment team to ensure the safety of the child and other children in the facility, including sleeping arrangements with the appropriate safety measures included in the child's ITP.

(f) If a child-caring facility accepts for placement a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime, the child-caring facility shall have written policies and procedures for the segregation of the child from a child committed to the cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).

1. Segregation shall include sight and sound separation of the child committed to the Department of Juvenile Justice and the child committed to the cabinet for the following functions within the facility or activities supervised by the facility:

a. Sleeping;

b. Personal hygiene; and

c. Toiletry.

2. During other functions within the facility or activities supervised by the facility, segregation shall include separation of the child committed to the Department of Juvenile Justice and the child committed to the cabinet to prohibit any physical contact and verbal communication between the children.

(g) Physical management [~~Therapeutic hold~~] shall be used in an emergency or a crisis situation only:

1. After attempts to de-escalate the situation have been made;

2. By trained staff; and

3. To prevent:

a. A child from injury to self or others; or

b. Serious property damage or disruption of the child-caring facility's program.

(h) Physical management [~~(g)Therapeutic hold~~] shall not be used as:

1. Punishment;

2. Discipline; or

3. For the convenience of staff.

(i) Physical management [~~(h)Therapeutic hold~~] shall be discontinued if a child displays adverse side effects including:

1. Illness;

2. Severe emotional or physical stress; or

3. Physical damage.

(3) Nutritional requirements.

(a) A child shall be served meals that:

1. Meet the nutritional guidelines of the U.S. Department of Agriculture that include foods from the five (5) basic food groups; and

2. Satisfy the quantity required to meet the needs of each child as to age, activity, and prescribed diet or ITP.

(b) A child shall be encouraged to eat the food served, but shall not be subjected to coercion.

(c) An order for a modified diet from a licensed physician shall be followed by the child-caring facility.

(d) A menu shall be planned at least one (1) week in advance, dated, posted, and kept on file for one (1) year.

(e) With the exception of a child receiving a meal at school, three (3) meals a day shall be provided at regular intervals and, except for weekends and holidays, no more than fourteen (14) hours shall lapse between the evening meal and morning meal.

1. A nourishing snack shall be provided and:

a. May be part of the daily food needs;

b. Shall not replace a regular meal; and

c. Shall be recorded on the menu.

2. A meal shall be scheduled at set times each day so that at least one (1) hot meal a day is not hurried, allowing time for conversation.

3. Food, or withholding of food, shall not be used as a punishment.

4. Only pasteurized milk and milk products, and U.S. government inspected meat shall be served to a child.

5. Food shall be prepared to preserve nutritive value and heighten flavor and appearance.

6. The same food shall be served to children under care and to staff members, unless a food is not suitable for a person because of:

a. The person's age;

b. A dietary restriction; or

c. A religious preference.

(f) Table service shall be provided for a child capable of eating at a table.

1. Tables and chairs shall be:

a. Of a height that corresponds to the size of the child served; and

b. Constructed of material that can be easily sanitized.

2. A child who has not had an opportunity to learn how to handle food with the usual table service shall be managed in a way that he shall not be embarrassed or subjected to ridicule.

(g) A written report of a food inspection by municipal, county, or federal authorities shall:

1. Be kept on file at the child-caring facility; and

2. Meet local, state, and federal regulations.

(h) If a child-caring facility subcontracts a food service, applicable federal and state administrative regulations shall apply.

Section 6. General Requirements. (1) An incident of suspected child abuse or neglect shall be reported as required by KRS 620.030.

(2)(a) The facility shall, with regard to suspected child abuse or neglect by an employee:

1. Document each incident;

2. Keep each incident document on file;

3. Make the files accessible to the cabinet.

(b) A child shall not be exploited for promotional purposes, or in a manner that shall cause the child or family to suffer discomfort or embarrassment.

(c) Except as indicated in paragraph (d) of this subsection, a child shall not be used personally for a fund-raising purpose for the child-caring facility.

(d) If a picture, slide, recording, or other private, personal effect of a child is used in fund-raising or promotional effort of a child-caring facility, written permission shall be obtained from:

1. A parent or guardian; or

2. An authorized.

a. Representative of the cabinet;

b. Representative of the Department of Juvenile Justice, or

c. Legal representative.

(3) For an activity conducted away from a child-caring facility, the facility shall:

(a) Safeguard the health and safety of the children during the activity;

(b) Have a written policy and procedures governing the activity;

(c) Maintain staff-to-child ratios in accordance with Section 3 of this administrative regulation; and

(d) Provide transportation in a manner that complies with Section 5(2)(d) of this administrative regulation.

(4) Clothing and personal possessions.

(a) Through agreement with the child's legal custodian, the child-caring facility shall provide a child with clothing and footwear that is clean, well-fitting, and seasonal.

(b) A child shall be provided individual articles of personal hygiene.

(c) The child-caring facility shall allow a child to have personal belongings and property consistent with this administrative regulation and child-caring facility policy.

(5) A child's money.

(a) The child-caring facility shall have written policy and procedure relating to money belonging to a child.

(b) A child shall have access to information regarding the balance of his fund.

(c) Within thirty (30) days of discharge, funds belonging to a child shall be transferred with or returned to the child.

(6) Visitation and communication shall include:

(a) Written policy on visitation and communication;

(b) An arrangement for visitation that is not in conflict with the ITP;

(c) Documentation of each visit in the case record; and

(d) Access to a telephone to make and receive a telephone call consistent with the child's ITP, current court orders, and the facility's child-caring policy.

(e) Allowing a child to contact cabinet staff by telephone within twenty-four (24) hours of the request of the child.

(7) Religion, culture, and ethnic origin.

(a) Facility policy shall demonstrate consideration for and sensitivity to:

1. The racial, cultural, ethnic, and religious background of a child in care; and

2. Availability of activities appropriate to the child's cultural or ethnic origin

(b) With the exception of a religious practice that is destructive or places a child in physical danger, an opportunity shall be provided for a child to

1. Practice the religious belief and faith of the child's individual or family preference; and

2 Participate in a religious activity without coercion.

(8) Education.

(a) If a child-caring facility operates its own school program, it shall have written policy and procedure regarding the development and implementation of the educational program. The policy and procedure shall include:

1. School attendance;

2. Teaching staff,

3. School records;

4. Educational supplies and equipment,

5. Individual educational plans; and

6. Use of a community school.

(b) A child-caring facility shall ensure that a child attends an accredited educational program the number of days required by law.

(c) A child shall be enrolled in an accredited educational program within one (1) week of admission.

(d) A school-age child ineligible or unable to attend an accredited school shall have an educational program specific to the individualized need of the child that may include a General Education Diploma or vocational training.

(e) If a child-care facility operates an educational program, maintenance of school records shall comply with state law and administrative regulations of the educational body having jurisdiction.

(f) The child-caring facility shall provide a quiet area and designated time for study.

(9) Work and chore assignment.

(a) An assigned chore or work assignment shall not place the child in physical danger.

(b) A chore assignment shall be posted within the child's living quarters.

(c) A child may be given a job in compliance with child labor laws for which he receives payment that shall be clearly differentiated from a chore expected of him to be completed in relation to the routine of daily living.

(d) A work assignment outside of a daily routine chore at the child-caring facility shall not be used as a form of punishment. An additional chore assignment beyond what is regularly assigned to a child may be:

1. Performed as restitution for intentional property damage made by the child; or

2. Given to a child for violation of a child-caring facility rule upon mutual agreement between the child and supervisory child-caring staff without the child being coerced to enter into an agreement.

(e) A child shall be given a rest period of at least ten (10) minutes during each hour worked.

(f) Use of a child to perform a chore or work assignment shall not negate the child-caring facility's ultimate responsibility for the maintenance of the child-caring facility nor the employment of staff sufficient to maintain the child-caring facility.

(10) Discipline.

(a) A child-caring facility shall have written policy and procedure governing disciplinary action.

(b) Discipline shall be:

1. Utilized as an educational tool and be related to the child's actions initiating the disciplinary process, and

2. Consistent with the child's ITP and in response to the child's lack of control or misbehavior.

(c) A group of children shall not be punished due to the misbehavior of one (1) or more individual group members

(d) The following practices shall not be allowed:

1. Cursing;

2. Screaming;

3. Name calling;

4. Threatening of physical harm;

5. Intimidation;

6. Humiliation;

7. Denial of food or sleep,

8. Corporal physical discipline, in accordance with KRS 199.640(6);

9. Hitting;

10 Unnecessarily rough handling,

11. Other physical punishment; or

12. Denial of visitation with family or custody holder as punishment.

(e) With the exception of a parent disciplining a child, a child shall not directly discipline another child.

(f) Handcuffs, weapons, mechanical restraining, chemical restraints, or other restraint devices shall not be used.

(g) A child placed in a time-out area shall be:

1. In sight or hearing of staff; and

2. Checked by staff at least every five (5) minutes until it is determined the child is ready to continue normal activity.

Section 7. Child-caring Program Services. (1) Admissions and intake.

(a) The child-caring facility shall have clearly defined written policy and procedure for an admission that identifies the age, sex, and detailed description of the type of child served.

(b) Acceptance of a referral shall be based on the assessment that the child's need is one that:

1. The service of the child-caring facility is designed to address; and

2. Cannot be met in a less restrictive setting.

(c) The child-caring facility shall not accept into care a child for whom a service cannot be provided based on the child-caring program's mission statement and its available resources.

(d) The child-caring facility shall have a written placement agreement with the child's custodian.

(e) **The child-caring facility shall conduct a:**

1. Preadmission interview with the child; or

2. Screening of the child's available information, if a preadmission interview is not possible due to an emergency placement. ~~[There shall be a preadmission interview with the child.]~~

(f) The following information regarding the child shall be obtained by the child-caring facility from the child's custodian during intake, or it shall be documented that the information was requested and not available:

1. Commitment order or signed voluntary admission form;

2. Verification of birth;

3. Immunization record; and

4. Social history and needs assessment that includes medical, educational, developmental, and family history.

(g) A written consent pertaining to the child's care shall be obtained from the child's custodian for:

1. Photograph, video, and audio tape;

2. Emergency and routine medical care; and

3. Release of case record information.

(h) Before admission, the child and custodian shall be informed in writing of their rights and the child-caring facility's responsibilities, including policy pertaining to services offered to the child.

(i) A child shall be informed upon admission of the right to file a grievance.

(j) Upon admission, the child shall be oriented to life at the child-caring facility, including rules and consequences for violation of the rules.

(2) Casework planning

(a) The child-caring facility shall have written policy and procedure for the ITP process including:

1. Assessment;

2. Assignment,

3. Designation of a case coordinator; and

4. Development, implementation, and evaluation of the ITP and family involvement.

(b) An initial assessment shall be completed by designated staff within twenty-four (24) hours of admission to include

1. Identifying information;
2. Presenting problem;
3. History (developmental, social, emotional health, education); and
4. Current level of functioning including strengths and weakness.

(c) An initial ITP shall be developed by designated staff and implemented within twenty-four (24) hours of admission.

(3) Comprehensive assessment and treatment plan.

(a) A comprehensive emotional and behavioral assessment of a child shall be completed by the treatment team and entered in the case record within twenty-one (21) days of admission, including the following:

1. A history of previous emotional, behavioral, and substance abuse problems and treatment;
2. The child's current emotional, behavioral, and developmental functioning, including strengths and weakness;
3. A psychiatric or psychological evaluation if recommended by the treatment team;
4. Other functional evaluation of language, self-care, social effectiveness, and visual-motor functioning, if recommended by the treatment team;
5. Social assessment that includes:
a. Environment and home;
b. Religion,
c. Ethnic group,
d. Developmental history;
e. Family dynamics and composition; and
f. Education, and
6. Recommendation for provision of treatment.

(b) A coordinated treatment team approach shall be utilized in the development, implementation, and evaluation of a comprehensive ITP.

(c) A comprehensive ITP shall be developed and implemented, in accordance with KRS 199.640(5)(a)4, to improve child functioning based upon the individual need of the child, and the child's family if appropriate, and shall include at least the following components:

1. Goals and objectives for permanence;
2. Time frame projected for completion of each goal and objective,
3. Method for accomplishing each goal and objective, including utilization of community providers;
4. Person responsible for completion of each goal and objective; and
5. Projected discharge date and placement plan

(d) The comprehensive ITP shall be developed within twenty-one (21) days of admission.

1. A treatment team review of the child's and family's progress toward meeting each treatment goal shall occur at least monthly.
2. Every effort shall be made to involve the child and his family in the monthly treatment team review.
3. Treatment team evaluation of the comprehensive ITP shall occur at least quarterly.
4. An additional assessment shall be completed upon the recommendation of the treatment team.
5. Evaluation and assessment information shall be documented and maintained in the child's record.

(e) The child shall be offered the opportunity to sign an ITP and ITP review, signifying understanding of the ITP.

1. If the child refuses to sign or is developmentally unable to understand the circumstance, this shall be documented in the record
2. The child and his family or custodian shall receive a copy of the ITP.

(4) Treatment environment. The daily child-caring program shall be planned in the following manner in order to create an atmosphere conducive to treatment:

(a) The child-caring facility shall have written policy and procedure describing its daily routine, rules, activity, and child and staff interaction.

(b) The daily child-caring program shall be

1. Planned to provide a framework for daily living; and
2. Reviewed and revised as the needs of the individual child or living group change.

(c) The daily routine shall be written and available to each child.

(d) Each rule shall be clearly stated in language that a child can understand

(e) Staff shall interact with a child in a warm, supportive, constructive, and confidential manner and shall treat the child with respect.

(f) Counseling and interviewing a child and the child's family shall be conducted in a private area.

(g) A daily recreational activity shall be available to promote mastery of:

1. Developmental tasks;
2. Development of relationships; and
3. Increase in self-esteem, in accordance with the child's ITP.

(h) The child-caring facility shall provide recreational equipment, maintained in usable and safe condition, to implement the recreational program.

(5) The child-caring facility shall make available a quality program for substance abuse prevention and treatment in compliance with KRS 199.640(5)(a)7.

(6) Discharge and aftercare.

(a) The child-caring facility shall have written policy and procedure that describe the condition under which a child may be discharged, including criteria for an unplanned or emergency discharge and a discharge inconsistent with the ITP.

(b) The approval of the program director shall be required for an unplanned or emergency discharge.

(c) Discharge planning shall begin with the development of the ITP and shall continue throughout subsequent ITP reviews. The treatment team shall consider the following matters related to discharge planning:

1. Identification of placement;
2. Community resources to provide support for youth; and
3. Family services.

(d) When a child is leaving a facility as a planned discharge, a predischarge conference shall be held to ensure that the child and family are prepared for successful transition into placement. The parent, guardian or custodian, the child, and the treatment team shall attend this conference.

(e) The child shall have at least one (1) preplacement visit prior to the planned discharge, or the facility shall document unsuccessful efforts to arrange a visit.

(f) The child-caring facility shall prepare a written discharge summary within fourteen (14) days following the date of discharge. A copy shall be provided to the custody holder. The summary shall include:

1. Information related to progress toward completion of each ITP goal;
2. Each barrier to treatment;
3. Each treatment method used in working with the child;
4. Date of discharge;
5. Reason for discharge; and
6. Name, telephone number and address of person or child-caring facility to whom the child was discharged.

(g) An aftercare service shall be provided to a child where no other agency has responsibility for the child's transition or adjustment to a new environment. Upon discharge, the following needs of the child shall be assessed and a referral made for needed aftercare service:

1. Educational;
2. Medical;
3. Vocational;
4. Psychological;
5. Legal; and
6. Social.

(7) Case record. The child-caring facility shall:

(a) Maintain, in a confidential and secure manner, a current case record on each child, including:

1. Identifying information on the child to include:
a. Name, ethnic origin and gender;
b. Date of birth and Social Security number;
c. Former residence;
d. Name, address, and occupation of each parent, if available;

e. Date of admission, and
f. Type of commitment;
2. Commitment order or custodian's consent form for admission;
3 Birth and immunization certificates;
4. Education;
5. Medical and dental records that may be maintained separately from the case record;
6. Assessment data or social history;
7. ITP and each review;
8 Each incident report, with a paper or electronic copy maintained in a centralized location within the licensed facility,
9. Chronological recording;
10. Correspondence with court, family, and custody holder;
11. Discharge summary; and
12. Written consent;

(b) Document, at least weekly, progress made by the child and his family toward meeting the treatment goal;

(c) Record the aftercare service it provides until the service is terminated;

(d) Have a written policy regarding maintenance, security, and disposal of a case record maintained by, or in possession of, the child-caring facility;

(e) Not disclose information concerning a child or his family to a person not directly involved in the case, without the written consent of the custodian of the child;

(f) **Forward, within twenty-four (24) hours, a request made by an individual or an agency to review the case record of a committed child, to the:**

1. Commissioner, Department for Community Based Services, if the child is committed to the cabinet; or

2. Other legal custodian, if the child is not committed to the cabinet; [~~Immediately forward a request made by an individual or an agency to review the case record of a committed child, to the commissioner~~][~~, Department for Community Based Services, Cabinet for Health and Family Services,~~] [~~or other legal custodian;~~]

(g) With the exception of a sealed adoptive record, release identifying or personal information including a Social Security card, birth certificate, or driver's license to the child at discharge;

(h) After the discharge of a child.

1. Maintain the case record at the child-caring facility for at least three (3) years; and

2. After three (3) years, the child-caring facility may archive the case record and have it transferred by the cabinet to one (1) of the designated record centers; or

3. Maintain the case record permanently at the child-caring facility;

(i) If the child-caring facility ceases to operate, transfer the case record to the Cabinet for Health and Family Services;

(8) The cabinet shall maintain a file on each record transferred to one (1) of its record centers. The file shall include the following information:

(a) The child's name, case number, date of birth; and

(b) Date the case record was sent to the cabinet.

(9) All records maintained by the child-caring facility shall be made available to the cabinet or designee upon request.

Section 8 Independent Living Services A child-caring facility shall:

(1) Provide independent living services:

(a) To a child:

1 In the custody of a state agency, and

2 Twelve (12) to twenty-one (21) years of age;

(b) As prescribed in the child's ITP; and

(c) In accordance with 42 U S C 677(a)(1) through (6); and

(2) Teach independent living:

(a) To a child:

1. In the custody of a state agency; and

2 Sixteen (16) years of age and older; and

(b) Developed in accordance with 922 KAR 1 310, Section 17(1)(e).

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Undersecretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 9 a.m.

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for child-caring facilities.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide child-caring facility licensure standards

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing standards for child-caring facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by setting forth standards for a child-caring facility in accordance with state statutes and in consideration of the safety, permanency, and well being of children in said placements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds a paragraph to provide a child-caring facility with placement guidelines for a child who has been committed to the Department of Juvenile Justice for commission of a sex crime, and makes technical corrections to comply with KRS Chapter 13A. In addition, this amendment makes technical corrections, enhancements, and clarifications to the standards contained within the administrative regulation after discussions with the Children's Alliance, provider community, Department of Juvenile Justice, and Cabinet's Office of Inspector General.

(b) The necessity of the amendment to this administrative regulation: This amendment promotes and ensures child-caring facility compliance with KRS 605 090, 620.090, and 620.230 - which were amended by House Bill 3 from the 2006 General Assembly as enacted through 2006 Ky. Acts ch. 182, Sections 50-52. The amendment also provides greater clarity and enhancements to existing licensure standards per recommendations of the cabinet's Office of Inspector General, Department of Juvenile Justice, provider community, and the Children's Alliance.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing child-caring facility standards in accordance with statutory requirements as amended by HB 3 2006 GA. The amendment also provides greater clarity, enhancements, and better conforms to requirements of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 605 090, 620.090, and 620.230 - which were amended by HB 3 2006 GA - by requiring child-caring facility placement segregation of a child who has been committed to the Department of Juvenile Justice for commission of a sex crime from a child committed to the Cabinet for Health and Family Services The amendment also corrects, enhances, or clarifies standards for licensure consistent with the statutes and standards of other private child care licenses.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 Kentucky youth are adjudicated with convictions of sexual offenses. These youth are presently placed in 3 residential treatment programs, 2 to3 other residential programs, and in the foster homes of 6 to 8 foster care agencies. There are a total of 74 private child-caring facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment,

including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation, regulating only child-caring facilities, could affect up to 3 residential treatment programs and 2 to 3 other residential programs by requiring a physical adaptation of facilities to segregate Department of Juvenile Justice sexual offenders from children in DCBS custody within a shared placement. The remainder of this amendment should provide greater clarity for license surveyors and child-caring facilities and should result in minimal, if any, impact. The amendment is anticipated by the Children's Alliance, provider community, Cabinet's Office of Inspector General, and Department of Juvenile Justice, as those entities were included in the review of the draft amendment to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):
Costs could be incurred in the physical adaptation of facilities to segregate Department of Juvenile Justice sexual offenders from other children within a shared placement.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, up to 3 residential treatment programs and 2 to 3 other residential programs will provider greater safety for children committed to the Cabinet for Health and Family Services in their care by keeping them segregated from Department of Juvenile Justice sexual offenders.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost is associated with the administrative body's implementation of this administrative regulation.

(b) On a continuing basis: No cost is associated with the administrative body's implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E and General Funds are used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? There is no tiering, as this administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 20 U S.C. 7183, 42 U S C. 677(a)(1)-(6)

2. State compliance standards KRS 194A.050

3. Minimum or uniform standards contained in the federal mandate. 20 U.S.C. 7183, 42 U.S.C. 677(a)(1)-(6)

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services; the Cabinet for Health and Family Services, Office of Inspector General; and the Department of Juvenile Justice will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5), 605 090, 605.150, 620.090, and 620 230.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will require no additional costs for its administration on the part of the Department for Community Based Services and the Cabinet's Office of Inspector General. However, due to the segregation requirements of HB 3 2006 GA, the Department of Juvenile Justice may see an increase in cost in the care of sexual offenders committed to that department. Any increase in costs is unknown. The Department of Juvenile Justice was invited to comment on the draft amendment and did so.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will require no additional costs for its administration on the part of the Department for Community Based Services and the Cabinet's Office of Inspector General. However, due to the segregation requirements of HB 3 2006 GA, the Department of Juvenile Justice may see an increase in cost in the care of sexual offenders committed to that department. Any increase in costs is unknown. The Department of Juvenile Justice was invited to comment on the draft amendment and did so.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amended After Comments)

922 KAR 1:310. Standards for child-placing agencies.

RELATES TO KRS 2.015, 17.165, 17.500(8), 158 135(1)(c), [~~194B 060,~~] 199.011, 199.430(3), 199.470, 199.492, 199.493, 199 510, 199.520, 199.570, 199 572, 199.590, 199 640, 199.645, 199 650-199.670, 202A.011(12), 202B.010(12), 216.300, 273.161(7), 311.720(9), 311.840(3), 314.011(5), (7), (9), 503.110(1), 600.020, 600 020(8), 605.090(1)[~~(b)~~], 610.110(6), 615.010-615 990, 620.020, 620.030, 620.090(2), 620 140(1)(d), 620.230(3), 625 040, 625.043, 16 C F R. 1000-1750, 45 C F R. Parts 160, 164, 1355 34, 8 U.S C. 1151, 42 U.S.C. 671(a)(23), [~~45 C.F.R. Parts 160, 164, 1355.34,~~] 42 U.S.C. 677(a)(1)-(6), 14901-14954[~~, EO 2004-726~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.640(5)(a), 605 150, 615.050

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A 050(1) provides that the Secretary of the Cabinet for Health and Family Services shall promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal

agencies for the proper administration of the cabinet and its programs. [~~EO 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.~~] KRS 199.640(5)(a) requires the Cabinet for Health and Family Services [~~Families and Children~~] to promulgate administrative regulations establishing basic standards of care and service for child-caring facilities and child-placing agencies. KRS 605.150 permits the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes basic standards for child-placing agencies.

Section 1. Definitions. (1) "Adequate supervision" means adult oversight of a child's activities with consideration of the child's past and current:

(a) Incidents;

(b) High risk behaviors; and

(c) Needs.

(2) "Adoption" means the legal process by which a child becomes the child of a person or persons other than biological parents.

(3) [~~(2)~~] "Aftercare" means services provided to the child after discharge from a child-placing agency.

(4) [~~(3)~~] "Applicant" means an individual or a family subject to approval by the child-placing agency as a:

(a) Foster home; or

(b) Adoptive home.

(5) [~~(4)~~] "Board of directors" is defined by KRS 273.161(7).

(6) [~~(5)~~] "Case management" means a process whereby a state agency or child-placing agency assesses the individualized needs of a child or family, arranges for the provision of services, and maintains documentation of actions and outcomes.

(7) [~~(6)~~] "Child" is defined by KRS 199.011(4) and 600.020(8) and may include:

(a) An extension or reinstatement of commitment in accordance with KRS 610.110(6) or 620.140(1)(d); or

(b) A child who meets the exceptions to the age of majority in accordance with KRS 2.015 [~~means a person who has not reached:~~

~~(a) Eighteen (18) years of age, unless there is an extended commitment for purposes in accordance with KRS 610.110(6) or 620.140(1)(d); or~~

~~(b) Twenty-one (21) years of age for a child committed to the Department of Juvenile Justice~~].

(8) [~~(7)~~] "Child-placing agency" is defined by KRS 199.011(7).

(9) [~~(8)~~] "Community resource" means a service or activity available in the community that shall supplement those provided by the child-placing agency in the care and treatment of a child.

(10) [~~(9)~~] "Executive director" means the person employed by the board of directors to be responsible for the overall administration and management of a child-placing agency.

(11) [~~(10)~~] "Home study" means an assessment done on a prospective foster or adoptive home by a social services worker.

(12) [~~(11)~~] "Independent living program" means a planned program that:

(a) Is licensed and designed to teach a child age sixteen (16) or older life skills that enable a child to become self-sufficient; and

(b) Meets requirements specified in Section 17(1) of this administrative regulation.

(13) [~~(12)~~] "Independent living services" means services provided to an eligible child, as described in Section 16 of this administrative regulation, to assist the child in the transition from dependency of childhood to living independently.

(14) [~~(13)~~] "Individual treatment plan" or "ITP" means a plan of action developed and implemented to address the needs of a child.

(15) [~~(14)~~] "Licensed health care professional" is defined by KRS 216.300(1).

(16) [~~(15)~~] "Medically-fragile child" means a child who is determined to have a medical condition as specified in 922 KAR 1:350.

(17) [~~(16)~~] "Mental health treatment" means services provided to an individual determined to have emotional, mental, or behavioral problems.

(18) [~~(17)~~] "Permanence" is defined by KRS 620.020(8).

(19) [~~(18)~~] "Placement" means a foster or adoptive home that has been approved by completing an application process, home study and required preparation.

(20) [~~(19)~~] "Placement services" is defined by KRS 199.011(13).

(21) [~~(20)~~] "Program director" means the person responsible for supervising the day-to-day operation of the program.

(22) [~~(21)~~] "Respite care" means temporary care provided by another individual or family to:

(a) Provide relief to a foster care parent, therapeutic foster care parent, or medically-fragile foster parent; or

(b) Allow an adjustment period for the child placed in out-of-home care.

(23) "Sex crime" is defined by KRS 17.500(8).

(24) [~~(22)~~] "Social services" means a planned program of assistance to help an individual move toward a mutual adjustment of the individual and the individual's environment.

(25) [~~(23)~~] "Social services worker" means a person who meets the qualifications as specified in Section 2(4)(c) of this administrative regulation.

(26) "Supervision Plan" means a written supplement to a child's ITP, developed pursuant to Section 6(7)(b)2 of this administrative regulation, that details a child-placing agency's roles and responsibilities to assure adequate supervision of a child in the agency's care, including those roles and responsibilities delegated to a foster home parent.

(27) [~~(24)~~] "Therapeutic foster care" is defined by KRS 158.135(1)(c).

(28) [~~(25)~~] "Therapeutic services" means clinical or supportive services provided to a child with severe emotional or behavioral needs.

(29) [~~(26)~~] "Treatment director" means an individual who meets the qualifications as specified in Section 2(4)(d) of this administrative regulation.

Section 2. Administration and Operation. (1) Licensing procedures.

(a) Licensing procedures for a child-placing agency shall be administered pursuant to 922 KAR 1:305.

(b) An independent living program is an optional component of the child-placing agency's license.

(c) A child-placing agency shall obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later. Accreditation shall be from a nationally-recognized accreditation organization, such as:

1. The Council on Accreditation; or

2. The Joint Commission on Accreditation for Healthcare Organizations.

(2) Board of directors. The child-placing agency shall have a board of directors, or an advisory board if the child-placing agency is a privately-held for-profit organization, that shall:

(a) Consist of a minimum of seven (7) members;

(b) Meet at least quarterly;

(c) Cause minutes of the meeting to be taken and kept in written form;

(d) Be responsible for and have the authority to ensure the continuing compliance with the requirements established by this administrative regulation;

(e) Approve a mission statement delineating the:

1. Purpose;

2. Objective;

3. Scope of services to be provided; and

4. Intake policy specifying the type of child to be accepted for care;

(f) Hire, supervise, and annually evaluate the executive director of the child-placing agency; and

(g) Delineate in writing the duties of the executive director.

(3) Executive director.

(a) The executive director shall:

1. Be responsible for the child-placing agency and its affiliates, pursuant to the child-placing agency's written policies and procedures;

2. Oversee all aspects of the child-placing agency; and

3 Report to the board, on a quarterly basis, the following:

a. Evaluation of program services;

b. Measure of goals and objectives established in subsection (2)(e)2 of this section;

c. Staff training; and

d. Incident reports.

(b) The criteria and process of this evaluation shall be approved by the board annually.

(c) If the executive director is not available, a designated staff person shall be responsible for the day-to-day operation of the child-placing agency.

(4) Staff qualifications.

(a) An executive director shall possess the following qualifications:

1.a. A master's degree in any of the following human services fields:

(i) Social work;

(ii) Sociology;

(iii) Psychology;

(iv) Guidance and counseling;

(v) Education;

(vi) Religious education;

(vii) Business administration;

(viii) Criminal justice;

(ix) Public administration;

(x) Child-care administration;

(xi) Nursing;

(xii) Family studies; or

(xiii) Another human service field related to working with families and children [~~a family or child~~]; and

b. Two (2) years of work experience in a human services program; or

2. A bachelor's degree with a major in a discipline designated in subparagraph 1 of this paragraph, and four (4) years work experience in a human services program.

(b) A licensed child-placing agency shall have one (1) member of the social work staff designated as program director who shall hold:

1. A master's degree in social work or in a discipline designated in paragraph (a)1 of this subsection; or

2.a. A bachelor's degree in social work or in a discipline designated in paragraph (a)1 of this subsection; and

b. At least two (2) years professional experience in working with a child or family.

(c) A social services worker shall:

1. Be responsible for social work, counseling or planning and coordinating services to a child; and

2. Hold at least a bachelor's degree in social work or a human services field.

(d) A treatment director shall:

1. Oversee the day-to-day operation of the treatment program;

2. Hold at least a master's degree in a human services discipline; and

3. Have at least five (5) years total experience in mental health treatment, with a minimum of three (3) years experience in mental health treatment of children with emotional or behavioral disabilities and their families.

(e)1. A child-placing agency contracting for the service of a social services worker not on the staff of the child-placing agency shall provide documentation [~~document~~] that the social services worker meets the qualifications in paragraph (c) of this subsection.

2. An agreement for this provision of service shall be on file at the child-placing agency and shall specify the qualifications of the social services worker.

(f) The program director shall supervise social service staff.

(g) In a therapeutic foster care program, approval and evaluation of services shall be carried out by a person meeting the qualifications of a treatment director.

(h) Social services staff shall not carry a caseload of more than twenty (20) children.

(5) Personnel policy.

(a) A child-placing agency shall have and comply with written personnel policies and procedures.

(b) An employee shall:

1. Be at least eighteen (18) years of age, [~~and~~]

2. Submit to a criminal background check in accordance with KRS 17.165 and a central registry check in accordance with 922 KAR 1:470, and

3. Submit to a new criminal background check in accordance with KRS 17.165 and central registry check in accordance with 922 KAR 1:470 at least once every two (2) years.

(c) 1. A person against whom has been made a substantiated allegation of abuse, neglect, or exploitation of a child shall not be employed in a position involving direct contact with a child.

2. The cabinet shall respond to allegations of abuse, neglect, or exploitation of a child in accordance with 922 KAR 1:330 and 922 KAR 1:480.

(d) A current personnel record shall be maintained for an employee that includes the following:

1. Name, address, Social Security number, date of employment, and date of birth;

2. Evidence of qualifications, including degree, current registration, certification, or licensure;

3. Record of participation in staff development;

4. Record of performance evaluation;

5. Criminal records and central registry checks [~~check~~] pursuant to paragraph (b)2 and 3 of this subsection;

6. Record of a physical exam related to employment, as specified in the child-placing agency's policies and procedures;

7. Personnel action;

8. Application for employment, resume, or contract; and

9. Evidence of personnel orientation.

(e) The child-placing agency shall have an ongoing staff development program under the supervision of a designated staff member.

(f) An employee under indictment, legally charged with felonious conduct, or subject to a cabinet investigation in accordance with 922 KAR 1:330 shall:

1. Be immediately removed from contact with a child; and

2. Not be allowed to work with the child until:

a. A prevention plan has been written and approved by a designated regional cabinet staff;

b. The person is cleared of the charge; or

c. A cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child:

(i) Abuse;

(ii) Neglect; or

(iii) Exploitation.

(g) Unless the volunteer is a practicum student, a volunteer who performs a similar function as paid staff described in subsection (4) of this section shall meet the same requirements and qualifications.

(h) Practicum students and volunteers shall submit to a background check and any other mandatory requirements listed in subsection (5)(b) and (c) of this section.

(i) A current personnel record shall be maintained for a practicum student or volunteer that includes the following:

1. Name, address, Social Security number, starting date, and date of birth;

2. Evidence of qualifications if the volunteer performs a similar function as paid staff; and

3. Criminal records and central registry checks pursuant to paragraph (h) of this subsection.

Section 3. Interstate Placement. (1) Prior to accepting a child from another state or prior to placing a child outside Kentucky, the child-placing agency shall comply with:

(a) KRS 615.030 to 615.040, Interstate Compact on Placement of Children;

(b) KRS 615.010, Interstate Compact on Juveniles; and

(c) 42 U S C. 671(a)(23).

(2) If a child committed to the cabinet makes a brief visit out of state, not accompanied by child-placing agency personnel, the child-placing agency shall obtain prior consent of designated regional cabinet staff.

(3) A child-placing agency shall comply with subsection (1) of this section, if a child placed with the child-placing agency visits or receives respite care in another state for a period to exceed:

(a) Thirty (30) days; or

(b) The child's school vacation period.

(4) If an emergency placement of a child into a licensed child-placing agency is made, compliance with KRS 615.030 to 615 040 shall be the responsibility of the placement source.

Section 4. Evaluation of an Applicant (1) A [~~The~~] child-placing agency's [~~agency~~] social services staff shall recruit a prospective foster or adoptive home.

(2) A child-placing agency shall:

(a) Complete a home study; and

(b) Approve the home prior to the placement of a child

(3) Documentation of the home study shall include the following:

(a) A personal interview with each member of the applicant's household;

(b) An assessment of the attitude of each member of the applicant's household toward the placement of a child into the home or adoption;

(c) Observations of the functioning of the applicant's household, including interpersonal relationships and patterns of interaction;

(d) The applicant's ability to accept a child's relationship with the child's family of origin;

(e) Proof of the applicant's:

1. Identity, such as a federally or state-issued photo identification card, [~~and~~]

2. Age of twenty-one (21) years or older; and

3. United States citizenship, such as a birth certificate, or legal alien status, such as a permanent resident card, as described in 8 U.S.C. 1151;

(f) A statement for each member of the applicant's household that shall be signed by a licensed physician or licensed health care professional verifying that the individual:

1. Is free of a communicable or infectious disease; and

2. Has no illness or condition that would present[~~:~~

~~1. Be signed by a licensed health care professional; and~~

~~2. State that the household member is free of illness or condition that presents~~] a health or safety risk to a child placed in the applicant's home,

(g) A signed statement by a licensed physician or licensed health professional regarding the applicant's physical ability to provide necessary care for a child;

(h) Verification that the applicant has a source of income separate from:

1. Foster care reimbursement; or

2. Adoption assistance;

(i) The name of three (3) personal references who:

1. Are not related to the applicant; and

2.a Shall be interviewed by the child-placing agency staff in person or by telephone; or

b. Shall provide letters of reference for the applicant;

(j) Verification that the applicant's financial stability has been assessed and approved in accordance with a child-placing agency's written policies and procedures;

(k) [~~If available,~~] Documentation of any [~~an~~] interview with an adult child [~~children~~] of the applicant, who does [~~do~~] not live in the applicant's home, regarding the applicant's parenting history;

(l) If applicable, verification from the applicant regarding a:

1. Previous divorce;

2. Death of a spouse; and

3. Present marriage;

(m) If the applicant does not have custody of the applicant's own child:

1. A copy of a [~~the~~] visitation order[~~, if applicable~~];

2. A copy of a [~~the~~] child support order; and

3. Proof of current payment of child support;

(n) Proof that the child-placing agency performed background checks on the applicant and any member of the applicant's household in accordance with criteria established in 922 KAR 1:490;

(o) Documentation that the applicant has access to:

1. [~~Reliable~~] Transportation that meets the child's needs;

2. School;

3 Recreation;

4. Medical care; and

5. Community facilities;

(p) If an applicant or household member will be transporting a foster child, proof that the individual possesses a valid driver's license and has automobile or driver's insurance coverage.

(q) Documentation that the applicant's home:

1. Does not present a hazard to the health and safety of a child;

2. Is well heated and ventilated;

3. Complies with state and local health requirements regarding water and sanitation; and

4. Provides in- or out-of-door recreation space appropriate to the developmental needs of a child placed in the applicant's home;

(r) Verification that:

1. No more than four (4) children, including the applicant's own children, shall share a bedroom; and

2. A foster parent shall not share a bedroom with a child in the custody of a state agency, unless prior approval is obtained from the state agency;

(s) Verification that an individual bed [~~, crib, playpen, or cot~~]:

1. Is provided for each child in the home;

2. **If the child is under age one (1), a crib that** meets the Consumer Products Safety Commission Standards pursuant to 16 C.F.R. 1000 to 1750, and

3. Is age and size appropriate for the child;

(t) Verification that:

1. Medication is locked,

2. Alcoholic beverages and poisonous or hazardous materials are inaccessible to the child; and

3. Ammunition and firearms are locked and stored separately;

(u) Proof that the applicant has [~~shall have~~]:

1. First aid supplies with unexpired dates available and stored in a place easily accessible by the foster parent,

2. A working telephone; and

3. A working smoke alarm within ten (10) feet of each bedroom, [~~and~~]

(v) If a business open to the public adjoins the applicant's household, consideration of potential negative impacts on the child and family, including:

1. Hours of operation;

2. Type of business; and

3. Clientele; and

(w) If an applicant was previously denied or **approval** [~~approved~~] to foster or adopt a child by another child-placing agency or the cabinet, verification of the denial, closure, and **indication of whether the closure was at the request of the foster parents or the agency** [~~supporting reason from the agency or cabinet~~].

(4) Exception to subsection (3)(e)2 of this section may be granted if the applicant is:

(a) Between eighteen (18) and twenty-one (21) years of age;

(b) A relative to the child to be placed in the applicant's home; and

(c) Able to meet the needs of the child to be placed in the applicant's home.

(5) For each potential applicant evaluated, the child-placing agency shall keep a written record of the findings of the home study and the evidence on which the findings are based.

(6)(a) Following approval as a foster home, the approving child-placing agency may request written approval from the state agency, with custody of the child, for the foster home to provide services as a certified.

1. Provider of Supports for Community Living in accordance with 907 KAR 1.145;

2. Therapeutic foster care provider for adults in accordance with 907 KAR 3.030; or

3. Family child care home in accordance with 922 KAR 2:100.

(b) Except as provided in paragraph (a) of this subsection, an approved foster home shall not simultaneously:

1. Provide day care center services in accordance with 922 KAR 2:090; and

2. Be used as a licensed or certified health care or social service provider.

[~~(c) The written approval specified in paragraph (a) of this subsection shall be required upon the effective date of this administrative regulation.~~]

(7) An employee of the department who provides protection

and permanency services shall be prohibited from becoming a foster parent or respite care provider for a child in the custody of the cabinet, unless the:

(a) Employee was a foster parent or respite care provider for the child at the time employment with the department in protection and permanency services began; and

(b) Commissioner approves, in writing, the employee to be a foster parent or respite care provider for the child.

(8) An employee of the department who provides protection and permanency services may apply to adopt a child in the custody of the cabinet if the:

(a) Employee had:

1. No relationship with the child or a parent of the child prior to the termination of parental rights in accordance with KRS Chapter 625, unless the employee is a relative of the child; or

2. Adopted a sibling of the child available for adoption; and

(b) Commissioner approves, in writing, the employee to adopt.

(9)(a) A child-placing agency shall develop written policies and procedures regarding employees of the child-placing agency serving as [a]:

1. A foster parent,

2. An adoptive parent; or

3. A respite care provider.

(b) Policies and procedures developed in accordance with paragraph (a) of this subsection shall address the prevention or appearance of:

1. A conflict of interest; or

2. Misuse of influence.

(10) A child-placing agency may make an exception to subsection (3)(t)1 of this section if:

(a) The exception is documented in the ITP of a child placed in the foster or prospective adoptive home;

(b) The child is learning to self-administer medicine under the supervision of the foster or prospective adoptive parent or other caretaker; and

(c) Measures are taken to prevent unauthorized access by another child in the same home.

(11) If an applicant is approved as a foster home, adoptive home, or respite care provider by a state agency or another child-placing agency, a child-placing agency shall:

(a) Conduct a home study in accordance with subsections (2), (3), and (5) of this section, and

(b)1. Document that the applicant meets training requirements in accordance with Section 5, 7, 10, 13, or 19 of this administrative regulation; and

2. If an applicant lacks training in accordance with subparagraph 1 of this paragraph, the child-placing agency shall, prior to placement of a child in the home:

a. Provide training in accordance with Section 5, 7, 10, 13, or 19 of this administrative regulation; or

b.(i) Develop an individualized curriculum to fulfill unmet training needs; and

(ii) Document the applicant's compliance with the individualized curriculum.

Section 5. Orientation and Preparation of a Foster Home. A child-placing agency shall:

(1) Develop and maintain an orientation and preparation curriculum to be kept on file;

(2) Provide a minimum of twenty-four (24) hours of orientation and preparation to a prospective foster parent, to include the following:

(a)1. Child-placing agency program description with mission statement;

2. Information about the rights and responsibilities of the home; and

3. Background information about the foster child and the child's family, including information in accordance with KRS 605.090(1)(b);

(b) An example of an actual experience from a foster parent that has fostered a child;

(c) Information regarding:

1. The stages of grief;

2. Identification of the behavior linked to each stage;

3. The long-term effect of separation and loss on a child;

4. Permanency planning for a child, including independent living services;

5. The importance of attachment on a child's [the] growth and development and how a child may maintain or develop a healthy attachment;

6. Family functioning, values, and expectations of a foster home;

7. Cultural competency;

8. How a child enters and experiences foster care, and the importance of achieving permanency; and

9. The importance of birth family and culture and helping children leave foster care;

(d) Identification of changes that may occur in the home if a placement occurs, to include:

1. Family adjustment and disruption;

2. Identity issues, and

3. Discipline issues and child behavior management; and

(e) Specific requirements and responsibilities of a foster parent.

(3) Maintain an ongoing foster home preparation and training program that:

(a) Provides a minimum of six (6) hours foster home training annually; and

(b) Maintains a record of preparation and training completed.

Section 6. Placement, [and] Case Management, and Supervision of a Child in a Foster Home, Medically-fragile Foster Home, or Therapeutic Foster Care Home. (1) A [The] child-placing agency shall:

(a) Place a child only in an approved foster home; and

(b) Keep a child who has been committed to the Department of Juvenile Justice for the commission of a sex crime in a separate foster home or prospective adoptive home from a child committed to the Cabinet in accordance with KRS 605.090(1), 620.090(2), and 620.230(3).

(2) A [The] child-placing agency shall select a foster home for a child based upon the:

(a) The child's assessment and ITP, **if available;**

(b) **Any information concerning the child's needs in placement; and** [The child's history of aggressive behavior or sexual acting-out, and]

(c) Measures to support the safety of the child, such as a placement restriction in accordance with subsection (1)(b) of this section, or another child in the foster home [Individual needs of the child, and

(b) Child's ITP].

(3) A child shall participate in the intake process and in the decision that placement is appropriate, to the extent that the child's age, maturity, adjustment, family relationships, and the circumstance necessitating placement justify the child's participation.

(4)(a) The number of children residing in a foster home by a child-placing agency shall not exceed six (6), including the foster parent's own children.

(b) The number of children residing in a foster home that cares for a child in the custody of the cabinet shall not exceed five (5), including the foster parent's own children.

(5) A child-placing agency shall have a maximum of two (2) children under two (2) years of age placed in the same foster home at the same time, with the exception of a sibling group, who may remain together.

(6)(a) Justification for an exception to subsection (4)(a) or (5) of this section shall be:

1. Documented in the foster parent file; and

2. Authorized by the program director.

(b) For a foster home that cares for a child in the custody of the cabinet, the child-placing agency shall submit a written justification for an exception to subsection (4)(b) or (5) of this section in accordance with 922 KAR 1:350, Section 2(2).

(7) The child-placing agency shall:

(a) Assess a child to be placed in foster care [and develop an ITP individualized for the child prior to or within thirty (30) days of placement];

(b) Within thirty (30) days of a child's placement, develop:

1. An ITP based upon the individual needs of the child and, if appropriate, the child's family, which addresses the:
a. Visitation, health, and educational needs of the child;
b. Child's permanency goals and related objectives;
c. Methods for accomplishing each goal and objective; and
d. Designation of an individual or individuals responsible for completion of each goal and objective;
2. A supervision plan for the child which:
a. Is attached to the child's ITP;
b. Identifies the current supervision needs of and expectations for the child based upon the child's recent and past:
(i) Incidents;
(ii) High-risk behaviors; and
(iii) Needs identified in the assessment conducted pursuant to paragraph (a) of this subsection;
c. Includes goals and objectives for the child's improvement with tasks assigned to the child-placing agency and foster home parent;
d. Is signed and dated by the social service worker and foster home parent; and
e. Remains a part of the child's record;
(c) Review a child's ITP and supervision plan on a quarterly basis or more frequently as the child's needs or circumstances dictate;
(d) Have a written agreement with the foster home stating the:
1. Responsibilities of the:
a. Child-placing agency; and
b. Foster home; and
2. Terms of each placement;
(e) [~~(c)~~] Require a foster home to certify, in writing, that supervision from the child-placing agency or the state agency, which has custody of the child, shall be allowed;
(f) [~~(d)~~] Document a placement in the foster home file;
(g) [~~(e)~~] Report immediately to the state agency, which has custody of the child, if there is:
1. A life-threatening accident or illness;
2. An absence without official leave;
3. A suicide attempt;
4. Criminal activity by the child requiring notification of law enforcement;
5. Death; or
6. [~~A child's~~] Possession of a deadly weapon by a child;
(h) [~~(f)~~] Report, if applicable, within two (2) business days to the state agency, which has custody of the child, if there is a:
1. Change in address;
2. Change in the number of people living in the home; or
3. Significant change in the foster home, such as changes in health or income status of the foster home;
(i) [~~(g)~~] Establish policies and procedures for supervision of a foster home by a worker other than the social services worker assigned to the foster home, who meets qualifications specified in section 2(4)(c) of this administrative regulation to:
1. Include:
a. Frequency of an in-home visit with the foster parent;
b. Means of supervision;
c. Methods of supervision; and
d. Personnel conducting the supervision;
2. Ensure a foster child's placement stability and safety; and
3. Be individualized, as needed, for the:
a. Child, or
b. Foster home;
(j) [~~(h)~~] Identify and make available necessary supports to a foster home, including:
1. A plan for respite care in accordance with Section 13 of this administrative regulation;
2. Twenty-four (24) hour crisis intervention; and
3. A foster home support group;
(k) [~~(i)~~] Assure that a child receives care and services, including independent living services:
1. In accordance with Section 16 of this administrative regulation; and
2. As prescribed by the child's needs as assessed in the child's ITP;
(l) [~~(j)~~] Provide information to a foster parent regarding the behavior and development of the child placed by the child-placing agency;
(m) [~~(k)~~] Inform the foster parent, in accordance with KRS 605.090(1)(b), of:
1. Inappropriate sexual acts or sexual behavior of the child as specifically known to the child-placing agency; and
2. Any behaviors of the child that indicate a safety risk for the placement;
(n) [~~(l)~~] Document each effort to:
1. Protect the legal rights of the family and the child; and
2. Maintain the bond between the child and the child's family, in accordance with the child's permanency plan;
(o) [~~(m)~~] Assure that a child shall have, for the child's exclusive use, clothing comparable in quality and variety to that worn by other children with whom the child may associate;
(p) [~~(n)~~] Be responsible for monitoring the child's school progress and attendance;
(q) [~~(o)~~] Secure psychological and psychiatric services, vocational counseling, or other services if indicated by the child's needs;
(r) [~~(p)~~] Reassess and document quarterly, in the child's ITP, placement and permanency goals [~~every ninety (90) calendar days~~], including independent living services, in accordance with Section 16 of this administrative regulation;
(s) [~~(q)~~] Conduct and document a face-to-face visit with the child at least once per month; and
(t) [~~(r)~~] Maintain foster care records in accordance with Section 18 of this administrative regulation.
(8) Without prior notification to and written authorization from the Kentucky Interstate Compact Administrator, a child shall not be:
(a) Placed with a family that normally resides in another state; or
(b) Permitted to go with a person to take up residence in another state.
(9)(a) An approved foster home in use shall be evaluated on an annual basis for compliance with responsibilities listed in the written agreement described in subsection (7)(b) of this section.
(b) Results shall be recorded in the foster parent file.
(10) Factors that shall result in a review of a foster home shall include:
(a) Death or disability of a family member;
(b) Sudden onset of a health condition that impairs [~~impair~~] a foster parent's ability to care for a child placed in the home;
(c) Change in marital status or home address;
(d) Sudden, substantial decrease in, or loss of, income;
(e) Child birth;
(f) Use of a form of punishment that includes:
1. Cruel, severe, or humiliating actions;
2. Corporal punishment inflicted in any manner;
3. Denial of food, clothing, or shelter;
4. Withholding implementation of the child's ITP [~~treatment plan~~];
5. Denial of visits, telephone or mail contacts with family members, unless authorized by court of competent jurisdiction; and
6. Assignment of extremely strenuous exercise or work;
(g) A report of abuse, neglect, or dependency that results in a finding that is:
1. Substantiated, or
2. Reveals concern regarding the care of the child;
(h) If the foster parent is cited with, charged with, or arrested due to a violation of law other than a minor traffic offense; [~~or~~]
(i) An incident required to be reported in accordance with Sections 6(7)(g) and (h), and 12(6) and (7) of this administrative regulation; or
(j) Other factors identified by a child-placing agency [~~staff~~] that jeopardize the physical, mental, or emotional well being of the child.
(11) The documentation of a review, specified in subsection (10) of this section, shall contain:
(a) Identifying information;
(b) Current composition of the household;
(c) Description of the situation that initiated the review;
(d) An assessment of the family functioning to determine if the child's needs are met; and

(e) [~~A plan for~~] Corrective action that may include a recommendation for closure of the foster home.

Section 7. Orientation and Preparation of a Therapeutic Foster Care Home. (1) A child-placing agency shall:

(a) Maintain the orientation and preparation curriculum on file, and

(b) Provide a minimum of thirty-six (36) hours of orientation and preparation for a prospective therapeutic foster care parent that shall incorporate the following topic areas:

1.a. Child-placing agency program description with mission statement;

b. Information about the rights and responsibilities of the therapeutic foster care home; and

c. Background information about a foster child and the child's family;

2. An example of an actual experience of a therapeutic foster care parent that has fostered a child,

3. Stages of grief;

4. Behaviors linked to each stage of grief;

5. Long-term effects on a child from separation and loss;

6. Permanency planning for a child, including independent living services;

7. Importance of attachment on a child's growth and development and the way a child maintains and develops a healthy attachment, including attachment disorder and associated behaviors;

8. Family functioning, values and expectations of a therapeutic foster care home;

9. Changes that may occur in the home with placement of a child regarding:

a. Family functioning;

b. Family adjustment,

c. Identity issues;

d. Discipline issues and child behavior management; and

e. Family disruption;

10. Specific requirements and responsibilities of a therapeutic foster care home;

11. Behavior management;

12. Communication skills;

13. Skill teaching;

14. Cultural competency;

15. Behavior management de-escalation techniques;

16. The dynamics of the sexually-abused child; and

17. The effect of chemical abuse or dependence by the child or the child's biological parent.

(2) A therapeutic foster care home shall receive a minimum of twenty-four (24) hours of annual training.

(3) A child-placing agency that provides therapeutic foster care shall maintain an ongoing therapeutic foster care preparation and training program that:

(a) Provides a minimum of twenty-four (24) hours of annual training; and

(b) Maintains a record of preparation and training completed.

Section 8. Additional Requirements for Therapeutic Foster Care. (1) A therapeutic foster care home shall accommodate the needs of a child who is unable to live with the child's own family and who:

(a) May benefit from care in a family setting; and

(b)1. Has clinical or behavioral needs that exceed supports available in a foster home; or

2. Is transitioning from group care as part of the process of returning to family and community.

(2) The number of children residing in a therapeutic foster care home that does not care for a child in the custody of the cabinet, shall be limited to a total of six (6) children, including no more than two (2) therapeutic foster care children.

(3) Justification for an exception to subsection (2) of this section shall be:

(a) Documented in the therapeutic foster care parent's file; and

(b) Authorized by the treatment director.

(4) The number of children residing in a therapeutic foster care home that cares for a child, in the custody of the cabinet, shall be limited to a total of four (4) children, including no more than two (2) therapeutic foster care children.

(5) The child-placing agency shall submit a justification for an exception to subsection (4) of this section in accordance with 922 KAR 1:350, Section 2(2).

(6) A treatment director shall supervise a treatment team and shall participate in the development of the ITP and the quarterly case consultation.

(7) A child-placing agency shall provide or contract, as specified in KRS 199.640(5)(a)(2), for therapeutic services individualized for the child, as needed, at least two (2) times per month.

(8) A therapeutic foster care parent shall be responsible for:

(a) Participation in the development of an assessment, [~~and~~] ITP, and supervision plan as specified in Section 6(7) of this administrative regulation [~~that includes visitation, health, education and permanency goals~~];

(b) Facilitation of in-home services provided by a social services worker at least two (2) times per month;

(c) Adequate supervision of the child and implementation of components of the ITP [~~treatment plan~~], including daily log documentation as specified in the ITP [~~treatment plan~~];

(d) Working with the child-placing agency to promote stability and avoid disruption for the child;

(e) Working with the child-placing agency in the development of a plan for the smooth transition of the child to a new placement, in the event of a disruption; and

(f) Providing independent living services for a child twelve (12) years of age or older consistent with a child's ITP.

(9) Except for a child who is the legal responsibility or in the custody of the cabinet or the Department of Juvenile Justice, the child-placing agency shall be responsible for:

(a) A preplacement conference, in a nonemergency placement, for the purpose of:

1. Developing permanency goals and a discharge plan for the child, including independent living services;

2 Developing a plan for the implementation of services;

3 Identifying the treatment goals; and

4. Developing a behavior management plan if applicable; and

(b) Inviting and encouraging attendance to the preplacement conference by [~~of~~]:

1. The prospective therapeutic foster care home;

2. A respite care provider approved in accordance with section 13(4) of this administrative regulation;

3. The child, if appropriate; and

4. The child's family.

(10) The social services worker shall:

(a) Have a first face-to-face visit with a child and therapeutic foster care parent on the day of the child's placement;

(b) Have another face-to-face visit with the therapeutic foster care parent or child within ten (10) calendar days of the child's placement;

(c) Telephone or visit, on a weekly basis, at least one (1) of the therapeutic foster care parents of each child on the therapeutic foster care worker's caseload;

(d) Visit a therapeutic foster care parent a minimum of two (2) times a month with at least one (1) visit being in the foster home;

(e) Visit the foster child face-to-face a minimum of two (2) times a month with at least one (1) visit in the therapeutic foster care home and one (1) visit outside the foster home;

(f) Carry a caseload of not more than twelve (12) therapeutic foster care children, taking into account:

1. Required responsibilities other than the case management of a child in foster care;

2. Additional support, contact and preparation needed by a therapeutic foster care home, due to the extent of the needs of the child served; and

3. The intensity of [~~extent of intensive~~] services provided to the child and the child's family;

(g) Conduct a quarterly case consultation, including the:

1. Foster home;

2. Child's public agency worker;

3. Child-placing agency treatment director and social services worker; and

4. Child and the child's family of origin, to the extent possible;

(h) Provide or contract for therapeutic services individualized

for a child at least two (2) times each month based on the child's needs assessed in the child's ITP;

(i) Identify the support needed by the foster family, including a:

1. Plan for respite care as provided in section 13 of this administrative regulation;

2. Plan for twenty-four (24) hour on-call crisis intervention; and

3. Foster home support group;

(j) Recommend and prepare an aftercare plan for a child, prior to discharge from therapeutic foster care, to ensure a successful transition; and

(k) Document a quarterly case consultation and revision to a child's ITP as determined by the case consultations.

(11) The child-placing agency shall:

(a) Meet requirements specified in Section 6(1) through (3) and (7) through (11) of this administrative regulation; and

(b) Annually reevaluate a therapeutic foster care home in accordance with Section 15 of this administrative regulation.

Section 9. Medically-fragile Child. (1) A medically-fragile child shall be:

(a) A child in the custody of the cabinet; and

(b) Determined by the cabinet to meet the medically-fragile requirements of 922 KAR 1:350.

(2) The decision to accept a medically-fragile child shall be optional to a child-placing agency

(3) If a child placed with a child-placing agency in a non-medically-fragile foster home becomes medically-fragile in accordance with subsection (1) of this section, the commissioner or designee and child-placing agency shall reevaluate the placement and ensure the child's needs can be met.

Section 10. Preparation of a Medically-fragile Foster Home. (1) A child-placing agency shall create a medically-fragile foster home only if the child-placing agency has:

(a) Staff meeting qualifications established in Section 2(4) of this administrative regulation supervising the home, who have received medically-fragile training in accordance with subsection 2(b) and (c) of this section; and

(b) A liaison established with the cabinet.

(2) A foster home may be approved to care for a medically-fragile child by a child-placing agency if the foster home:

(a) Includes a primary caregiver who is not employed outside the home, unless approved in writing by designated cabinet staff;

(b) Completes, in addition to training specified in Section 5 of this administrative regulation:

1. Twenty-four (24) hours of cabinet training **to include first aid and cardiopulmonary resuscitation (CPR) if the foster parent is not currently certified in first aid and CPR;**

2. Sixteen (16) hours of cabinet training if the foster parent is currently certified in first aid and CPR; or

3. [~~2.~~] Training approved in advance by the cabinet, in the areas of:

a. Growth and development;

b. Nutrition; and

c. Medical disabilities;

(c) Maintains certification in:

1. [~~Cardiopulmonary resuscitation or~~ "]CPR["]; and

2. First aid;

(d) Is located within a.

1. One (1) hour drive of a medical hospital with an emergency room; and

2. Thirty (30) minute drive of a local medical facility; and

(e) Is evaluated in accordance with Section 4[~~(2) through (9)~~] of this administrative regulation.

(3) Professional [~~health care~~] experience related to the care of a medically-fragile child may substitute for the training requirement of the medically-fragile foster parent as specified in subsection (2)(b) and (c) of this section:

(a) Upon the approval by a designated cabinet staff; and

(b) If the foster parent is a licensed health care professional, to include a:

1. Physician as defined in KRS 311.720(9);

2. Registered nurse as defined in KRS 314.011(5);

3. Licensed practical nurse as defined in KRS 314.011(9);

4. Physician's assistant as defined in KRS 311.840(3); or

5. Advanced registered nurse practitioner as defined in KRS 314.011(7).

(4) If the cabinet determines that a child currently in the care of a foster parent approved by the child-placing agency is a medically-fragile child in accordance with Section 9(1) of this administrative regulation, then the cabinet shall prioritize the foster home's enrollment in training as specified in subsection (2)(b) and (c) of this section.

(5) An approved medically-fragile foster home may receive annual reapproval, if the foster home:

(a)1. Annually completes **the following amount** [~~twenty-four (24) hours~~] of ongoing training in content areas specified by subsection 2(b) and (c) of this section:

a. Twenty-four (24) hours if the foster parent is not currently certified in first aid and CPR; or

b. Sixteen (16) hours if the foster parent is currently certified in first aid and CPR; and

2. Does so before the anniversary date of approval as a medically-fragile foster home; and

(b) Continues to meet the requirements in Section 15 of this administrative regulation.

(6) Except for a sibling group or unless approved by designated cabinet staff, no more than four (4) children, including the medically-fragile foster parent's own children, shall reside in a medically-fragile foster home.

(7) Unless approved by designated cabinet staff, a:

(a) One (1) parent medically-fragile foster home shall not care for more than one (1) medically-fragile child; and

(b) Two (2) parent medically-fragile foster home shall not care for more than two (2) medically-fragile children.

(8) A child-placing agency shall submit a justification for an exception to subsection (6) or (7) of this section, in accordance with 922 KAR 1:350, Section 2(2).

Section 11. Placement of a Medically-fragile Child. (1)(a) In addition to training required in Section 10(2)(b) and (c) of this administrative regulation, an approved medically-fragile foster parent shall receive training on how to care for the specific needs of a medically-fragile child placed in the home.

(b) The training shall be conducted by a licensed health care professional[~~, as specified in Section 10(3)(b) of this administrative regulation~~].

(2) A medically-fragile child shall be placed in an approved medically-fragile foster home.

(3) A child-placing agency shall:

(a) Submit a justification for an exception to subsection (2) of this section in accordance with 922 KAR 1:350, Section 2(2);

(b) Provide case management services:

1. As described in Section 6(1) through (3) and (7) through (11) of this administrative regulation; and

2. In accordance with the child's:

a. Health plan developed by designated cabinet staff; [~~and~~]

b. ITP; and

c. Supervision plan;

(c) Support the child's health plan developed by designated cabinet staff; and

(d) Conduct a face-to-face visit with the child at least two (2) times per month.

Section 12. Expectations for a Foster Home, [~~or~~] Therapeutic Foster Care Home, or Medically-fragile Foster Home. An approved foster parent or therapeutic foster care parent shall:

(1) Provide a child placed by the child-placing agency with a family life, including:

(a) Nutritious food;

(b) Clothing comparable in quality and variety of that worn by other children with whom the child may associate;

(c) Affection;

(d) Training;

(e) Recreational opportunities;

(f) Education opportunities;

(g) Nonmedical transportation;

(h) Opportunities for development consistent with the child's

religious, ethnic, and cultural heritage;

(i) Adequate supervision; and

(j)

(i) Independent living services for a child twelve (12) years of age or older;

(2) Permit a child-placing agency and[~~, if applicable,~~] staff of a state agency[~~, which has custody of the child,~~] to visit the home;

(3) Share with the child-placing agency and, if applicable, staff of the state agency which has custody of the child, information about the child placed by the child-placing agency;

(4) Notify the child-placing agency ten (10) days prior if the home is approved to provide foster or adoptive services through another private child-placing agency or the cabinet;

(5) Notify the child-placing agency prior to:

(a) Leaving the state with a child placed by the child-placing agency for more than two (2) nights; or

(b) A child placed by the child-placing agency being absent from the foster home for more than three (3) days;

(6) Report immediately to the child-placing agency through which the child is placed, if there is:

(a) A life-threatening accident or illness;

(b) An absence without official leave,

(c) A suicide attempt;

(d) Criminal activity by the child requiring notification of law enforcement;

(e) Death; or

(f) A child's possession of a deadly weapon;

(7) Report, if applicable, within two (2) business days to the child-placing agency if there is a:

(a) Change in address;

(b) Change in the number of people living in the home; [~~or~~]

(c) Significant change in circumstance in the foster home; or

(d) Failure of the foster child or foster parent to comply with the supervision plan;

(8) Cooperate with the child-placing agency if child-placing agency staff arranges for a child, placed in the foster home by the child-placing agency, and the child's birth family regarding:

(a) Visits;

(b) Telephone calls; or

(c) Mail;

(9) Surrender a child or children to the authorized representative of the child-placing agency or the state agency, which has custody of the child, upon request;

(10) Keep confidential all personal or protected health information as shared by the cabinet or child-placing agency, in accordance with KRS 194B.060 and 45 C.F.R. Parts 160 and 164, concerning a child placed in a home or the child's birth family;

(11) Support an assessment of the service needs, including respite care, and the development of an ITP, including the supervision plan, of a child placed by the child-placing agency,

(12) Participate in a case planning conference concerning a child placed by the child-placing agency;

(13) Cooperate with the implementation of the permanency goal established for a child placed by the child-placing agency;

(14) Ensure that a child in the custody of the cabinet receives the child's designated per diem allowance;

(15) Provide medical care to a child placed by the child-placing agency as needed, including:

(a) Administration of medication to the child and daily documentation of the administration; and

(b) Annual physicals and examinations for the child;

(16) Treat a child placed by the child-placing agency with dignity;

(17) Report suspected incidents of child abuse, neglect, and exploitation in accordance with KRS 620.030; and

(18) Comply with general supervision and direction of the child-placing agency or, if applicable, the state agency which has custody of the child, concerning the care of the child placed by the child-placing agency.

Section 13. Respite For Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care. (1) The child-placing agency shall develop written policies and procedures to address the respite care needs of a child or a foster parent.

(2) Respite care shall not be used as a means of placement for a child.

(3) Respite care shall be in accordance with Section 3(3) of this administrative regulation.

(4) The child-placing agency shall approve a respite care provider in accordance with Section 4 (3)(e), (g), and (n) through (v) of this administrative regulation.

(5) A respite care provider shall:

(a) Receive preparation for placement of a child, including:

1. Information in accordance with KRS 605.090(1)(b); and

2. Information regarding the supervision plan of the child;

(b) Provide adequate supervision in accordance with the child's supervision plan; and

(c)1. Give relief to a foster parent caring for a child; or

2. Provide for an adjustment period for a child.

(6) A respite care provider for a medically-fragile child shall meet the requirements of:

(a) Section 10(2)(b) through (d) or 10(3) of this administrative regulation; and

(b) Section 11(1) of this administrative regulation.

Section 14. Private Placement Process. Except for a child in the custody of, or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, the following shall be the responsibility of the child-placing agency if a private placement is conducted.

(1) For a child being placed with a child-placing agency, the child-placing agency shall obtain an:

(a) Agreement for voluntary care signed by the custodian; or

(b) Order from a court of competent jurisdiction placing the child into the custody of the child-placing agency.

(2) The child-placing agency shall:

(a) Complete an intake assessment of the strengths and needs of the child and the child's family of origin; and

(b) Ascertain the appropriateness of the referral for the child.

(3)(a) The child-placing agency shall be responsible for developing an ITP individualized for a child and the child's family based on an individualized assessment of the child's and family's needs within thirty (30) days of the child's placement with the child-placing agency.

(b) The assessment shall be revised as needed.

(c) The assessment and ITP shall include the type and extent of services to be provided to the child and the child's family.

(4) Unless not in the best interest of the child, the child, parent, and foster parent shall be included in developing the assessment and ITP.

(5)(a) The foster home selected for placement shall be the most appropriate home based on the child's needs and the strengths of the foster family.

(b) The foster home shall be located as close as possible to the home of the family of origin, in order to facilitate visiting and reunification.

(6)(a) The social services worker and the foster parent shall work collaboratively to prepare the child prior to the placement.

(b) Unless a circumstance precludes preparation and the circumstance is documented in the case record, a child shall have a period of preparation prior to the placement in the foster home

(7) The child-placing agency shall:

(a) Provide or arrange for services to support reunification for a child for whom family reunification is the goal;

(b) Assess and document the parent's capacity for reunification quarterly;

(c) Provide for review of the child in order to evaluate the progress toward achieving the child's permanency goal every six (6) months; and

(d) Assure that foster care continues to be the best placement for the child.

(8)(a) Services to the family of origin and to the child shall be adapted to their individual capacities, needs, and problems.

(b) A reasonable effort shall be made to return the child to the family of origin.

(9) Planning for the child regarding treatment program matters, including visitation, health, education, and permanency goals, shall be developed in collaboration with the:

(a) Family of origin,
(b) Treatment director;
(c) Social services worker; and
(d) Foster home.

(10)(a) The child-placing agency shall work with a foster home to promote stability and avoid disruption for a child, to include:

1. Services specified in Section 6(1) through (3) and (7) through (11) of this administrative regulation, and

2. Annual reevaluation of the foster home in accordance with Section 15 of this administrative regulation.

(b) A request for the removal of a child from a foster home shall be explored immediately and shall be documented by the social services worker.

(c) If disruption is unavoidable, the child-placing agency and foster home shall develop a plan for the smooth transition of the child to a new placement.

(11)(a) Preparation for the return of a child to the family of origin shall be supervised by a social services worker.

(b) The family shall participate in planning for the child's return.

(c) If regular contact with the child's family does not occur, a plan for the child's return shall include at least one (1):

1. Prior visit between the child and the family; and

2. Preliminary visit of the child to the child's family home.

(12) The child-placing agency shall recommend a plan for aftercare services for a child and the child's family.

Section 15. Annual Reevaluation of an Approved Adoptive Home Awaiting Placement or an Approved Foster Home. Annually, a child-placing agency shall:

(1) Conduct a personal interview in the home with an approved:

(a) Adoptive home awaiting placement; or

(b) Foster home; and

(2) Assess:

(a) Any change in the home;

(b) The ability of the home to meet the needs of a child placed in the home; and

(c) The home's continued compliance with the requirements of this administrative regulation in:

1. Section 4(3) (h), (i), and (l) through (v) and (5) [~~(6)~~] through (11) [~~(8)~~] of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home;

2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to case management and expectations, if the home is approved as a foster home;

3. Sections 5(3)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and

4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(3) After initial approval, a foster parent, an adoptive parent awaiting placement, a respite care provider, or a member of a foster or adoptive parent's household shall comply with a child-placing agency's request for a statement regarding the parent, provider, or household member's general health and medical ability to care for a child.

(4) If a prospective adoptive home is awaiting an international adoption, the child-placing agency may conduct a reevaluation of the home once every eighteen (18) months [~~If a child-placing agency requests a statement regarding the foster parent's general health and medical ability to care for a child, the foster home parent shall comply with the request.~~]

Section 16. Independent Living Services. A child-placing agency shall:

(1) Provide independent living services:

(a) To a child:

1. In the custody of a state agency;

2. Who [~~That~~] is twelve (12) to twenty-one (21) years of age; and

3 Directly or indirectly through a foster parent with whom the child is placed;

(b) As prescribed in the child's ITP; and

(c) In accordance with 42 U.S.C. 677(a)(1) through (6); and

(2) Teach independent living:

(a) To a child:

1. In the custody of a state agency; and

2. Sixteen (16) years of age and older; and

(b) Developed in accordance with Section 17(1)(e) of this administrative regulation.

Section 17. Independent Living Programs. (1) A child-placing agency providing independent living programming shall:

(a) Conduct and document an assessment of the child's skills and knowledge:

1. Within fourteen (14) days of [~~Prior to~~] a [~~Within thirty (30) days of the~~] child's placement with the child-placing agency and provision of services in the agency's independent living program; and

2. Using a tool to assess:

a. Money management and consumer awareness;
b. Job search skills;
c. Job retention skills;
d. Use of and access to:
i. Community resources;
ii. Housing; and
iii. Transportation;
e. Educational planning;
f. Emergency and safety skills;
g. Legal knowledge;
h. Interpersonal skills, including communication skills;
i. Health care knowledge, including knowledge of nutrition,
j. Human development knowledge, including sexuality;
k. Management of food, including food preparation;
l. Ability to maintain personal appearance,
m. Housekeeping; and
n Leisure activities;

(b) Develop and update quarterly a written ITP within thirty (30) calendar days of a child's placement with a child-placing agency in an independent living program, to include:

1. Educational, job training, housing, and independent living goals;

2. Objectives to accomplish a goal;

3. Methods of service delivery necessary to achieve a goal and an objective,

4. Person responsible for each activity;

5. Specific timeframes to achieve a goal and an objective,

6. Identification of a discharge plan;

7. Plan for aftercare services; and

8. Plan for services from a cooperating agency;

(c) Maintain written policies and procedures for the independent living program;

(d) Train and document the training provided to designated independent living staff within thirty (30) days of employment on.

1. Content of the independent living curriculum;

2. Use of the independent living materials;

3 Application of the assessment tool, and

4. Documentation methods used by the child-placing agency; and

(e) Maintain and teach independent living in accordance with 42 U.S.C. 677(a)(1) through (6), including:

1. Money management and consumer awareness;
2. Job search skills;
3. Job retention skills;
4. Educational planning;
5. Community resources;
6. Housing;
7. Transportation;
8 Emergency and safety skills;
9. Legal skills;
10. Interpersonal skills, including communication skills;
11. Health care, including nutrition;
12. Human development, including sexuality;
13. Food management, including food preparation;
14. Maintaining personal appearance;
15. Housekeeping;
16. Leisure activities;
17. Voting rights and registration;

18. Registration for selective service, if applicable;
19. Self-esteem;
20. Anger and stress management;
21. Problem-solving skills; and
22. Decision-making and planning skills.

(2) A social services worker from an independent living program shall:

(a) Be responsible for a child sixteen (16) to eighteen (18) years of age in an independent living program **and provide supervision in accordance with the child's supervision plan**; and

(b) Be available for twenty-four (24) hours, seven (7) days a week crisis support for a child in the independent living program, regardless of the child's age; and

(c) Have:

1. Daily face-to-face contact with a child:
a. Sixteen (16) to eighteen (18) years of age; and
b. In the independent living program;
2. A minimum of one (1) face-to-face, in-home contact per week for a child:
a. Eighteen (18) to twenty-one (21) years of age; and
b. In the independent living program,

(d) Conduct a visual and exploratory review of a child's living unit at least monthly, to include a review for:

1. Safety;
2. Use of alcohol, and
3. Illegal contraband;

(e) Maintain a caseload of no more than ten (10) children, **including independent living program:**

1. Participants sixteen (16) to twenty-one (21) years of age; and

2. Participants' children assigned a Level of Care of III or higher; and

(f) Document annual compliance with fire and building codes for any living unit in which the agency places a child.

(3) (a) A living unit for a child in an independent living program shall be occupied by only a child or children approved to occupy the living unit by the child-placing agency.

(b) Nonresidents shall be asked to vacate the living unit.

(4) The child-placing agency shall assure and document that the living unit of a child in an independent living program:

(a) Does not present a hazard to the health and safety of the child;

(b) Is well ventilated and heated, and

(c) Complies with state and local health requirements regarding water and sanitation.

(5) The child-placing agency shall maintain documentation for each child concerning:

(a) Assistance to the child in finding and keeping in touch with family, if possible;

(b) Health care and therapeutic services received by a child;

(c) Progress each child has made in the independent living program, including independent living services received;

(d) Progress in an educational program, including vocational education;

(e) An assessment of the child's readiness to live independently; and

(f) The social services worker's contacts with the child, including observation of the child's living arrangement.

Section 18. Maintenance of a Foster Care, Medically-fragile Foster Care, or Therapeutic Foster Care Record. (1)(a) The child-placing agency shall maintain a record on each child and foster home, including medically-fragile foster homes and therapeutic foster care homes.

(b) The child's record and the foster home record shall show the reason for placement change and steps taken to ensure success.

(c) A case record shall be maintained in conformity with existing laws and administrative regulations pertaining to confidentiality, pursuant to KRS 199.430(3), 199.640, and 45 C.F.R. Parts 160 and 164.

(2) The record of the child, including information of the child's family, shall include:

(a) Identifying information for child, parent, and foster home;
(b) Commitment order or custodian's consent for admission;
(c) Birth and immunization certificate;
(d) Educational record;
(e) Medical and dental record since placement;
(f) Social history and assessment;
(g) ITP and review;
(h) Supervision plan and updates to the plan;
(i) Permanency goals, including independent living services,
(j) [(i)] Incident reports, including details of the child's behavior and supervision at the time of the incident;
(k) [(j)] Monthly progress notes based on the ITP and supervision plan,
(l) [(k)] Quarterly revisions to the child's ITP;
(m) [(l)] Correspondence with the:
1. Court,
2. Family,
3. Department for Community Based Services; or
4. Department of Juvenile Justice,
(n) [(m)] Discharge report; and
(o) [(n)] Aftercare plan.

(3) The foster home's record shall include documentation relating to the:

(a) Orientation and preparation of the home, including all adult caregivers in the household;
(b) Required preparation hours and the topics covered,
(c) Placement of the child;
(d) Narrative summary of the initial and annual foster home's home study;
(e) Supervision of the foster home, including critical incidents;
(f)1. Annual training requirements that are met in accordance with Section 5(3) of this administrative regulation by the foster parent and all adult caregivers in the household, or
2. If applicable, annual training requirements in accordance with Section 7(2) or 10(5)(a) of this administrative regulation; [and]
(g) Background checks in accordance with Sections [Section] 4(3)(n) and 15(2)(c)1 of this administrative regulation;
(h) Copy of any placement exceptions granted; and
(i) A copy of the written statement of the foster home's closure completed pursuant to Section 23(3) of this administrative regulation.

(4) A child-placing agency shall:
(a) Maintain a child or foster home's record for at least three (3) years;
(b) After three (3) years:
1. Archive the record and have it transferred by the cabinet to one (1) of the designated record centers; or
2. Maintain the record permanently at the child-placing facility;
(c) Transfer the record to the cabinet, if:
1. The agency ceases operations; and
2. No other operational governing entity exists; and
(d) Make available all records maintained by the agency to the cabinet or its designee upon request.

Section 19. Orientation and Preparation of an Adoptive Home. A child-placing agency shall:

(1) Prepare and maintain the orientation and preparation curriculum on file;

(2) Provide orientation and preparation to a prospective adoptive home in accordance with the child-placing agency's policies and procedures to include the following:

(a) An example of an actual experience from a parent that has adopted a child,
(b) Challenging behavior characteristics of an adoptive older child;
(c) Referral resources for a developmental delay;
(d) Transition issues with focus on stages of grief, and a honeymoon period,
(e) Loss and the long-term effects on a child;
(f) Attachment and identity issues of the child,
(g) Cultural competency;
(h) Medical issues including referral resources;
(i) Family functioning, family values, and expectations of an adoptive home;
(j) Identification of changes that may occur in the family unit

upon the placement of a child to include:

1. Family adjustment and disruption;
2. Identity issues; and
3. Discipline; and

(k) Financial assistance available to an adoptive home; and

(3) Ensure that an approved adoptive home awaiting the placement of a child receives adoptive home training annually in accordance with the child-placing agency's established policies and procedures.

Section 20. Adoption Placement Process. (1) A child shall not be placed for adoption until the:

(a) Adoptive home has been approved;

(b) Parental rights of the mother, legal or birth father, and putative father of the child, if not the same person as the legal father, are terminated by a circuit court order entered pursuant to KRS Chapter 625, and

(c) Child is placed with the child-placing agency for the purpose of adoption placement.

(2) A child's parent shall not be induced to terminate parental rights by a promise of financial aid or other consideration.

(3)(a) The authority granted to a child-placing agency licensed by the cabinet authorizing the agency to place a child for adoption shall not be used to facilitate an adoptive placement planned by a doctor, lawyer, clergyman, or person or entity outside the child-placing agency.

(b) The child-placing agency shall comply with provisions of 922 KAR 1:010.

(4) The following shall be obtained by the child-placing agency.

(a) A developmental history of the adoptive child to include

1. Birth and health history;
2. Early development;
3. Characteristic ways the child responds to people and situations;
4. Any deviation from the range of normal development;
5. The experiences of the child prior to the decision to place the child for adoption;
6. Maternal attitude during pregnancy and early infancy;
7. Continuity of parental care and affection,
8. Out-of-home placement history;
9. Separation experiences; and
10. Information about the mother, legal father, and putative father, if not the same person as the legal father, and family background:

a. That may affect the child's normal development in order to determine the presence of a significant hereditary factor or pathology; and

b. Including an illness of the biological mother or father;

(b) A social history of the biological or legal parent, to include:

1. Name;
2. Age;
3. Nationality;
4. Education;
5. Religion or faith; and
6. Occupation;

(c) Information obtained from direct study and observation of the child by a:

1. Social services worker;
2. Physician or other licensed health care professional, and, if indicated;
3. Foster home;
4. Nurse,
5. Psychologist; and
6. Other consultants; and

(d) Information from the mother, if possible, identifying the biological father, or legal father, if different from the biological father, for the purpose of:

1. Determining the father's parental rights; and
2. Establishment of possible hereditary endowments.

(5) Exception to subsection (4)(a)1 and 2 of this section may be granted, if the adoption involves a child born in a country other than the United States.

(6) If either biological or legal parent is unavailable, unwilling, or unable to assist with the completion of information necessary to comply with KRS 199.520 and 199.572, the child-placing agency shall document information, to the extent possible, from the existing case record.

(7) Prior to finalization of the adoptive placement, a medical examination shall be made by a licensed physician or other licensed health professional to determine:

(a) The state of the child's health;

(b) Any significant factor that may interfere with normal development; and

(c) The implications of any medical problem.

(8) The condition under which an adoptive home agrees to accept the child shall be decided upon, prior to placement of the child. The written agreement between the child-placing agency and the adoptive home shall embody the following provisions:

(a) The adoptive home shall agree to:

1. Comply with KRS 199.470;
2. File an adoptive petition at a time agreeable to the adoptive home [~~them~~] and the child-placing agency; and
3. Permit supervision by the child-placing agency in accordance with the child-placing agency's policies and procedures:

a. After placement; and

b. Preceding a final judgment of adoption by the circuit court;

(b) The child-placing agency shall be responsible for providing the adoptive home with written information regarding the child's:

1. Background;
2. Medical history;
3. Current behavior; and
4. Medical information necessary to comply with KRS 199.520(4)(a); and

(c) The adoptive home and the child-placing agency shall agree that the child may be removed from the placement, at the request of either party, before the filing of the adoptive petition.

(9)(a) Preplacement visits shall be arranged for the adoptive home and a child.

(b) The pattern and number of visits shall be based on the child's:

1. Age;
2. Development; and
3. Needs [~~of the child~~].

(10) During preparation, the child-placing agency shall discuss the child's readiness to accept the selected placement with the child, in accordance with the child's age and ability to understand.

(11)(a) Unless the child-placing agency and, if applicable, the state agency which has custody of a child belonging to a sibling group, determines that it is more beneficial for siblings to be placed in separate adoptive homes, siblings who have had a relationship with each other shall be placed together.

(b) If siblings have been separated in placements:

1. The case record shall reflect a valid basis for the separation;
2. The decision to separate siblings shall be made by the executive director of the child-placing agency; and
3. Continued contact between siblings shall be maintained, if possible.

(12) A child-placing agency shall comply with Section 6(1)(b) of this administrative regulation during the process of placing a child in a prospective adoptive home.

Section 21. Supervision of an Adoptive Placement. (1) The child-placing agency placing a child shall remain responsible for the child until the adoption has been granted. This responsibility involves the following:

(a) Two (2) meetings by the social services worker with the child and the adoptive home, including both adoptive parents if not a single parent adoption, one (1) visit of which shall be in the adoptive home before filing of the adoption petition,

(b) The continuation of case management, visits, and telephone contacts based upon the needs of the child until the adoption is legally granted; and

(c) Awareness of a change in the adoptive home including health, education, or behavior.

(2) Upon request of the cabinet, the child-placing agency shall:

(a) Provide information pursuant to KRS 199.510, as necessary to report to the court to proceed with adoption;

(b) Prepare and provide the original confidential report to the

court, and

(c) Forward to the cabinet a copy of

1. The confidential report that was provided to the court, and

2. Information required by KRS 199 520 and 199 572.

(3) If the court finds the adoptive home to be unsuitable and refuses to grant a judgment, the child-placing agency shall remove the child from the home.

Section 22. Maintenance of Adoptive Case Record. (1) The child-placing agency shall maintain a case record from the time of the application for services through the completed legal adoption and termination of child-placing agency services for:

(a) A child accepted for care, and the child's family; and

(b) An adoptive applicant.

(2) The case record shall contain material on which the child-placing agency decision may be based and shall include or preserve:

(a) Information and documents needed by the court;

(b) Information about the child and the child's family;

(c) A narrative or summary of the services provided with a copy of legal and other pertinent documents, and

(d) Information gathered during the intake process including the following.

1. A description of the situation that necessitated placement of the child away from the child's family, or termination of parental rights;

2. A certified copy of the order of the circuit court terminating parental rights and committing the child to the child-placing agency for the purpose of adoption;

3. Verification of the child's birth record and the registration number;

4. A copy of the child's medical record up to the time of placement;

5. A copy of the required evaluation of the adoptive placement;

6 Date of adoptive placement,

7. A statement of the basis for the selection of this adoptive home for the child;

8. A record of after-placement services with dates of:

a. Visits;

b. Contacts;

c. Observations;

d. Filing of petition;

e. Granting of judgments; and

f. Other significant court proceedings relative to the adoption;

9. Child's adoptive name; and

10. Verification of preparation and orientation and annual training in accordance with Section 19 [5] of this administrative regulation.

(3) If there is need to share background information with a party to a completed adoption, or to have the benefits of information from a closed adoption record to offer services following completion of an adoption, the child-placing agency shall comply with KRS 199.570.

(4) Records on adoption that contain pertinent information shall be:

(a) Maintained indefinitely following final placement of a child; and

(b) Sealed and secured from unauthorized scrutiny.

(5) A child-placing agency shall submit adoptive case records to the cabinet, if:

(a) The child-placing agency closes, and

(b) No other operational governing entity exists.

Section 23. Closure of an Approved Foster or Adoptive Home. (1) A foster or adoptive home shall be closed if:

(a) Sexual abuse or exploitation by a resident of the household is substantiated;

(b) Child maltreatment by a resident of the household occurs that is serious in nature or warrants the removal of a child;

(c) A serious physical or mental illness develops that may impair or preclude adequate care of the child by the home; or

(d) The home fails to meet requirements of this administrative regulation in:

1. Section 4(3)(h), (i), and (l) through (v) and (5) [(6)] through (11) [(8)] of this administrative regulation, with regard to evaluation, if the home is approved as a foster or adoptive home,

2. Sections 6(9)(a) and 12 of this administrative regulation, with regard to placement and case management, if the home is approved as a foster home;

3. Sections 5(3)(a), 7(2), or 10(5)(a) of this administrative regulation, with regard to annual training, if the home is approved as a foster home; and

4. Section 19(3) of this administrative regulation, with regard to annual training, if the home is approved as an adoptive home.

(2) A foster or adoptive home may be closed

(a) In accordance with the terms specified in the written agreement between the child-placing agency and the foster or adoptive home; or

(b) In accordance with the terms specified in the written contract between the cabinet and the child-placing agency.

(3) The child-placing agency shall provide the foster or adoptive parent a written closure statement to include:

(a) Date of approval and termination; and

(b) Indication of whether the closure was at the request of the foster parents or the agency.

Section 24. Foster Care Registry. (1) [~~Upon the effective date of this administrative regulation,~~] A child-placing agency shall register a foster home with the cabinet, approved by the child-placing agency, to include medically-fragile foster homes and therapeutic foster care homes.

(2) Information shall be provided to the cabinet in a format prescribed by the cabinet, to include:

(a) The foster parents:

1. Full name;

2. Social Security number; and

3. Address, including county of residence;

(b) The child-placing agency's:

1. Name; and

2. Mailing address;

(c) The date the foster home was approved; and

(d) Whether the foster home is active or inactive.

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Undersecretary
MARK D BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC. July 13, 2007 at 9 a m.
CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes standards for child-placing agencies.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide licensure standards for child-placing agencies in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing licensure standards for child-placing agencies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing licensure standards for child-placing agencies in accordance with state statutes and in consideration of the safety, permanency, and well being of children in said placements.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation adds provisions to provide a child-placing agency with placement standards for a child who has been committed to the Department of Juvenile Justice for commission of a sex crime, makes technical

corrections to comply with KRS Chapter 13A, and provides enhancements and clarifications to the standards contained within the administrative regulation after discussions with the Children's Alliance, Department of Juvenile Justice, provider community, and Cabinet's Office of Inspector General.

(b) The necessity of the amendment to this administrative regulation: This amendment promotes and ensures child-placing agencies' compliance with KRS 605.090, 620.090, and 620 230 - which were revised by HB 3 2006 GA, as enacted through 2006 Ky. Acts ch. 182, Sections 50-52. The amendment also provides greater clarity and enhancements to the standards per the recommendations of the Children's Alliance, Cabinet's Office of Inspector General, Department of Juvenile Justice, and provider community.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing child-placing agency standards in accordance with state statutes as amended by HB 3 2006 GA. The amendment also providers greater clarity, enhancements, and better conforms to the requirements of KRS Chapter 13A.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 605.090, KRS 620.090, and KRS 620.230 - which were revised HB 3 2006 GA as enacted by 2006 Ky. Acts ch. 182 Sections 50-52 - by requiring child-placing agencies placement segregation of a child who has been committed to the Department of Juvenile Justice for commission of a sex crime from other children who have been committed to the Department for Community Based Services (DCBS).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Approximately 250 Kentucky youth are adjudicated with convictions of sexual offenses. These youth are presently placed in 3 residential treatment programs, 2 to 3 other residential programs, and in the foster homes of 6 to 8 foster care agencies. There are 115 licensed child-placing agencies in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The amendment to this administrative regulation, regulating only child-placing agencies, could affect up to 6 to 8 foster care agencies by requiring the agencies to segregate Department of Juvenile Justice sexual offenders from children committed to DCBS. The amendment should also provider greater clarity for license surveyors and child-placing agencies and should result in minimal, if any, impact. The amendment is anticipated by the Children's Alliance, provider community, Cabinet's Office of Inspector General, and Department of Juvenile Justice, as those entities were included in the review of the draft amendment to this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3).

Exact costs to the impacted entities are unknown. However, additional foster homes may be necessary to ensure adequate segregation of the child populations in accordance with the state statutes as amended by HB 3 2006 GA. Recruiting and retaining additional foster homes may result in increased costs to the agencies. The amendment is anticipated by the child-placing agencies, the Children's Alliance, the Cabinet's Office of Inspector General, and the Department of Juvenile Justice, as those entities were included in the formal review of the draft amendment to this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, up to 6 to 8 foster care agencies will have to segregate Department of Juvenile Justice sexual offenders from children committed to DCBS by keeping them in a separate foster home or prospective adoptive home placement. The segregation will provide additional protections to children who have not been committed to the Department of Juvenile Justice for the commission of a sex crime

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost is associated with the administrative body's implementation of this administrative regulation.

(b) On a continuing basis: No cost is associated with the administrative body's implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Title IV-E and General funds are used for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? There is no tiering, as this administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 16 C.F.R. 1000 to 1750, 45 C.F.R. Parts 160, 164, 1355.34, 42 U.S.C. 671(a)(23), 677(a)(1)-(6), 14901-14954

2. State compliance standards. KRS 194A.050(1), 199.640(5)(a), 605.150, 615 050

3. Minimum or uniform standards contained in the federal mandate. 16 C.F.R. 1000 to 1750, 45 C.F.R. Parts 160, 164, 1355.34, 42 U.S.C. 671(a)(23), 677(a)(1)-(6), 14901-14954

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation will impose no stricter requirements or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services; the Cabinet for Health and Family Services, Office of Inspector General; and the Department of Juvenile Justice will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.640(5), 605.090, 605 150, 620.090, and 620.230.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The amendment to this administrative regulation will require no additional costs for its administration on the part of the Department for Community Based Services or the Cabinet's Office of Inspector General. Due to the potential need for separate and perhaps additional foster homes for sex offenders committed to the

Department of Juvenile Justice, as necessitated by the segregation requirements of state statutes as amended by HB 3 2006 GA, the Department of Juvenile Justice may see an increase in costs. The amount of any increase is unknown. The Department of Juvenile Justice was invited to comment on the draft amendment and did so.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will require no additional costs for its administration on the part of the Department for Community Based Services or the Cabinet's Office of Inspector General. Due to the potential need for separate and perhaps additional foster homes for sex offenders committed to the Department of Juvenile Justice, as necessitated by the segregation requirements of state statutes as amended by HB 3 2006 GA, the Department of Juvenile Justice may see an increase in costs. The amount of any increase is unknown. The Department of Juvenile Justice was invited to comment on the draft amendment and did so.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Dentistry
(Amendment)

201 KAR 8:220. Clinical examinations.

RELATES TO: KRS 313.050, 313 060, 313.100
STATUTORY AUTHORITY: KRS 313 220(1)
NECESSITY, FUNCTION, AND CONFORMITY: KRS 313.050 requires the passage of a written and a clinical examination in order to become licensed as a dentist. This administrative regulation establishes the standards for the clinical examination.

Section 1. Definitions. (1) "Gross malperformance" means gross injury to the hard or soft tissue or gross failure to observe accepted dental principles as determined by the examiners.

(2) "Misconduct" means:

(a) Cheating on the examination by giving assistance to, or receiving assistance from, another individual;

(b) Disorderly conduct, as defined in KRS 525 060; or

(c) Harassment, as defined in KRS 525.070.

Section 2. (1) Clinical examination The requirements of the clinical examination shall be within the discretion of the board as to subject matter but these requirements shall be agreed upon one (1) year prior to the examination, and shall remain within the subjects contained in the regular curriculum of accredited dental schools.

(2) Successful completion of the clinical examination adopted for use by the Kentucky Board of Dentistry shall require that a candidate obtain a score of seventy-five (75) percent or higher on each individual section of [~~successfully complete~~] one (1) of the following examinations within three (3) tries

(a) The examination of the Southern Regional Testing Agency, Inc.;

(b) The examination of the Western Regional Testing Association;

(c) The examination of the Northeast Regional Board, provided that the candidate also successfully completes an additional CSW Computer Simultations examination; or

(d) The examination of the Central Regional Dental Testing Services, Inc , provided that the candidate also successfully completes an additional CSW Computer Simulatations examination [~~Association~~].

(3)(a) An applicant who has taken the clinical examination three (3) times and failed to achieve a passing score shall not be allowed to sit for the examination again until a remediation plan has been submitted, approved, and completed in accordance with this subsection

(b) The applicant shall:

1. Review the results of the previous administrations of the examinations and determine the areas of deficiency in the applicant's previous attempts at the examination; and

2. Submit a remediation plan to the board that includes further study or work in the areas that were demonstrated to be deficient for that candidate in the previous three (3) examinations.

(c) The board shall review the stated deficiencies and the plan and either approve it or modify it based on the deficiencies of the candidate as demonstrated by the examination results

(d) The applicant shall show proof of successful completion of the remediation plan before being allowed to sit for a further administration of the examination

(4) Regional testing agencies shall not conduct examinations in the Commonwealth of Kentucky without obtaining the authorization of the Kentucky Board of Dentistry.

(5) A candidate shall be dismissed during the course of the examination for gross malperformance or misconduct.

(6) A candidate who is dismissed from the examination for malperformance or misconduct shall have the right to appeal his dismissal to the Kentucky Board of Dentistry by filing a petition in writing stating his grounds for appeal before the next regularly scheduled meeting of the Kentucky Board of Dentistry. Thereafter, a majority vote by the board members present shall determine the issue.

(7) A candidate may appeal a decision of the board in accordance with KRS 13B.140.

DAVID NARRAMORE, President
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 5, 2007 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation amendment shall be held on August 22, 2007, at 11 a.m., at the Kentucky Board of Dentistry, located at 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation amendment. A transcript of the public hearing will not be made unless a written request for a written transcript is made If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation amendment. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation amendment to the contact person.

CONTACT PERSON: Eric T. Clark, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Ste 540, Louisville, Kentucky 40223, phone (502) 429-7280, fax (502) 429-7282

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Eric T. Clark

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the standards for the Board's clinical licensure examinations.

(b) The necessity of this administrative regulation: To ensure that applicants for dental licensure by examination achieve certain competency requirements in order to become licensed as a dentist.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 313.220(1) provides that the Board of Dentistry may select the subjects and the standard of proficiency and percentage for examinations to practice dentistry.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation establishes the standards for the Board's clinical licensure examinations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this regulation specifies that applicants for dental licensure by examination must pass each section of a clinical licensure examination and requires applicants who take the CRDTS or NERB examination to take an additional CSW Computer Simulation examination.

(b) The necessity of the amendment to this administrative regulation: To maintain a proficient competency level in the Board's accepted clinical licensure examinations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 313.220(1) provides that the Board of Dentistry may select the subjects and the standard of proficiency and percentage for examinations to practice dentistry.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this regulation will clarify the standards for the clinical licensure examinations accepted by the Board of Dentistry.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The amendment to this regulation will affect all applicants who are applying for a dental license by examination.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Each applicant for licensure by examination will have to obtain a score of 75% or higher on each section of the Board's clinical licensure examinations. Applicants who take the NERB or CRDTS examination will also have to successfully complete and additional CSW computer simulation examination in order to be eligible for licensure as a dentist in Kentucky.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Applicants who take the CSW computer simulation examination will have to pay an additional $150 in order to take that examination.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Applicants for dental licensure by examination will have a proficient competency in all areas of dentistry

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding needed to implement and enforce this regulation

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase in fees will be necessary

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This proposed amendment to the regulation would not establish or increase any fees.

(9) TIERING Is tiering applied? No, tiering is not applied because the same standards govern all persons within the appropriate section of the regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Kentucky Board of Barbering
(Amendment)

201 KAR 14:050. Apprentice's license; qualifications.

RELATES TO: KRS 317.450(1)(a), (2)[~~, 317.540(1)(a)~~]

STATUTORY AUTHORITY: KRS 317.440(1)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 317.440(1)(c) This administrative regulation establishes a specific time period for the training and supervision of apprentice barbers. [~~Educational qualifications of an apprentice and conditions for a cosmetologist to become licensed as a barber.~~]

Section 1. Applicants for a license as an apprentice barber who do not have proof of graduating from high school [~~completing four (4) years of high school~~] shall show results of a G.E.D test with a score of forty-five (45) percent or better

Section 2. A [~~Any~~] person holding a Kentucky cosmetology license shall [~~will~~] be given credit for 750 hours toward obtaining a Kentucky apprentice barber license.

Section 3 An apprentice barber shall apply for a barber license no sooner than nine (9) months and no longer than eighteen (18) months after passing the apprentice examination. An extension of this period of time shall be granted at the discretion of the board based on a reasonable written explanation by the apprentice barber. The b0oard may limit the extension to a finite period.

Section 4. A nine (9) month apprenticeship consists of working in a barber shop under the immediate supervision of a licensed barber for an average of twenty (20) hours or more per week for nine (9) months.

NOEL EUGENE RECORD, Chair

APPROVED BY AGENCY: July 9, 2007

FILED WITH LRC: July 11, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 27, 2007, at 10 a.m., at the Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Karen Greenwell, Administrator, Kentucky Board of Barbering, 9114 Leesgate Road, Suite 6, Louisville, Kentucky 40222-5055, phone 502 429-7148, fax 502 429-7149.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Karen Greenwell, Administrator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation prescribes the specific time period for the training and supervision of apprenticeship which must be complete before taking the barber examination.

(b) The necessity of this administrative regulation: This administrative regulation relates to KRS 317.450(1)(a), (2) and is necessary to establish and advise apprentices of the specific time period they have to complete an apprenticeship before taking the barber examination.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms

to the content of the authorizing statute, KRS 317.440(1)(c), by establishing the specific time period for the training and supervision of apprenticeship.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of 201 KAR 317.440(1)(c) by informing the apprentice and their supervisor of the specific time period for their apprenticeship training and supervision which must be complete before being eligible to take the barber examination.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment specifies the time in which an apprentice must complete the apprenticeship before taking the barber examination.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to advise apprentices of the time period they have to complete an apprenticeship.

(c) How the amendment conforms to the content of the authorizing statutes: The Board is authorized to promulgate administrative regulations governing the training and supervision of apprentices as established in KRS 317.440(1)(c).

(d) How the amendment will assist in the effective administration of the statutes: By defining the specific time period for the training and supervision of apprenticeship.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The Board anticipates this amendment will affect approximately 200 licensed apprentices annually.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensed apprentices and their supervisors will know and can plan in advance, the specific time they have to complete the training and supervision of their apprenticeship period before taking the barber exam.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs associated with this administrative regulation

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This should assist them as they prepare to take the barber exam.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No new costs will be incurred by the changes.

(b) On a continuing basis: No new costs will be incurred by the changes.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is required for implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be required to implement the changes made by this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or
indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not applied because all individuals affected by the regulation are treated the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Apprentice barbers licensed by the Kentucky Board of Barbering.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 317.440(1)(c).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. No new costs will be incurred by this administrative regulation amendment.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No new revenue will be generated by this administrative regulation amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No new revenue will be generated by this administrative regulation amendment for subsequent years.

(c) How much will it cost to administer this program for the first year? No new costs will be incurred by this administrative regulation amendment.

(d) How much will it cost to administer this program for subsequent years? No new costs will be incurred to administer this administrative regulation amendment for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: Please note that the administrative regulation amendment to 201 KAR 14.050 will not create any new revenues for either the agency or State Government. Further, this amendment will not create any new expenditures for the agency, the licensees or State Government. This administrative regulation amendment simply establishes and advises apprentices of a specific time period of training and supervision they have to complete their apprenticeship before taking the barber examination. There are no fee increases and no new fees established by the administrative regulation amendment to 201 KAR 14:050.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:260. Organization and administration standards for prelicensure programs of nursing.

RELATES TO: KRS 314.041(1), 314.051(1), 314.111(1), 314.131(2)

STATUTORY AUTHORITY: KRS 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111(1) and 314.131(2) require [~~requires~~] the board to approve [~~curricula and standards for~~] schools of nursing and courses preparing persons for licensure and to monitor standards for nurse competency under KRS Chapter 314. This administrative regulation establishes the organization and administration standards for prelicensure registered nurse or practical nurse programs.

Section 1. Organization or Administration Standards for Prelicensure Registered Nurse and Practical Nurse Programs. To be eligible for approval by the board, a program shall have:

(1) A governing institution.

(a) The governing institution which establishes and conducts the program of nursing shall hold accreditation as a postsecondary institution, college, or university by an accrediting body recognized by the United States Department of Education [~~be accredited by the southern association of colleges and schools or the appropriate accrediting body~~].

(b) The governing institution shall assume full legal responsibility for the overall conduct of the program of nursing. The program of nursing shall have comparable status with the other programs in the governing institution and the relationship shall be clearly delineated.

(c) The governing institution shall:

1. Designate a program [~~nurse~~] administrator for the prelicensure [~~each~~] program who is qualified pursuant to 201 KAR 20:310 [~~site~~];

2. Assure that at least fifty (50) [~~twenty-five (25)~~] percent of the program [~~nurse~~] administrator's time shall be dedicated [~~available~~] to complete the duties specified in this administrative regulation [~~subsections (3) and (4) of this section~~] at each program [~~site~~];

3. Establish administrative policies; [~~and~~]

4. Provide evidence that the fiscal, human, physical, clinical, and technical learning resources are adequate to support program mission, processes, security, and outcomes;

5. Provide student support programs, services, and activities consistent with the mission of the governing institution that promote student learning and enhance the development of the student;

6. Make financial resources available to the program of nursing consistent with equivalent programs at the governing institution;

7. Employ nurse faculty pursuant to 201 KAR 20:310 in sufficient number and expertise to accomplish program outcomes and quality improvement;

8. Provide written policies for faculty related to qualifications for the position, rights and responsibilities of the position, criteria for evaluation of performance, workload, promotion, retention, and tenure;

9. Involve the nurse faculty in determining academic policies and practices for the program of nursing; and

10. Provide for the security, confidentiality, and integrity of faculty employment records. [~~Provide financial support, resources, and facilities for the operation of the program of nursing.~~]

(d) The governing institution shall provide an organizational chart which describes the organization of the program of nursing and its relationship to the governing institution.

(2) Administrative policies.

(a) There shall be written administrative policies for the program which are in accord with those of the governing institution and available to the board for review.

(b) The board shall be notified in writing of a vacancy or pending vacancy in the position of the program administrator within fifteen (15) days of the program of nursing's awareness of the vacancy or pending vacancy. When the program administrator vacates the position, the head of the governing institution shall submit to the board in writing:

1. The effective date of the vacancy;

2. The name of the registered nurse who has been designated to assume the administrative duties for the program and a copy of his curriculum vitae;

3. If there is to be any lapse between the date of the vacancy and the date the newly-appointed program administrator assumes his duties, the head of the governing institution shall submit a plan of transition to insure the continuity of the program. Progress reports shall be submitted as requested by the board;

4. The length of the appointment of an interim program administrator shall not exceed six (6) months. Additional six (6) month periods may be granted upon request to the board; and

5. If the individual to be appointed as the interim program administrator is not qualified pursuant to 201 KAR 20:310, the head of the governing institution shall petition the board for a waiver prior to the appointment [~~change in the appointment of the nurse administrator~~].

(c) A written plan for the orientation of the faculty to the governing institution and to the program [~~or to the extension program~~] shall be implemented.

(d) There shall be a written contract between the governing institution and each agency or institution that provides a learning experience for a student. A contract shall not be required for an observational experience [~~or field trip~~].

1. The contract shall clearly identify the responsibilities and privileges of both parties.

2. The contract shall bear the signature of the administrative authorities of each organization.

3. The contract shall vest in the nurse faculty control of the student learning experiences subject to policies of the contractual parties.

4. The contract shall be current and may include an annual automatic renewal clause [~~reviewed annually~~].

5. The contract shall contain a clause on its termination by either party.

(3) A program or an interim program [~~nurse~~] administrator who shall have authority and responsibility in the following areas:

(a) Development and maintenance of collaborative relationships with the administration of the institution, other divisions or departments within the institution, related facilities and the community.

(b) Participation in the preparation and management [~~administration~~] of the program of nursing budget.

(c) Screening and recommendation of candidates for nurse faculty appointment, retention, and promotion.

(d) Within thirty (30) days of appointment, submit the qualifications of all nurse faculty and clinical instructors as directed by the board [~~Development of admission, retention and progression criteria~~].

(e) Provide leadership within the nurse faculty for the development, implementation, and evaluation of the program of nursing.

(f) Facilitates the development and implementation of written program policies for the following:

1. Student admission;

2. Student re-admission and advance standing;

3. Student progression, which shall include:

a. The level of achievement a student must maintain in order to remain in the program or to progress from one (1) level to another; and

b. Requirements for satisfactory completion of each course in the nursing curriculum.

4. Requirements for completion of the program;

5. Delineation of responsibility for student safety in health related incidents both on and off campus;

6. Availability of student guidance and counseling services;

7. The process for the filing of grievances and appeals by students;

8. Periodic evaluation by the nurse faculty of each nursing student's progress in each course and in the program;

9. Policies related to student conduct that incorporate the standards of safe nursing care; and

10. Publication and access to current academic calendars and class schedules.

(g) Facilitates the [~~Facilitation of~~] continuing academic and professional development for the faculty.

(h) Coordinates the development and negotiation of contracts with clinical facilities. The number and variety of clinical agencies shall be adequate to meet curricular outcomes. Also, coordinates the development of selection and evaluation criteria for clinical facilities and insures that the criteria are utilized by the program of nursing.

(i) Establishment of student/nurse faculty ratio in the clinical practice experience. The maximum ratio of nurse faculty to students in the clinical area of patients/clients shall be defensible in light of safety, learning objectives, student level, and patient acuity. However, in no case shall the student/nurse faculty ratio exceed ten (10) to one (1) in the clinical practice experience, including observational or preceptored experiences. Observational experiences include an assignment where a student observes nursing and where the student does not participate in direct patient or client contact but has access to a clinical instructor as needed. This ratio shall not apply to on campus skill lab experiences. [~~The criteria to determine the student/faculty ratio shall include:~~

~~1. Acuity level of the patient population.~~

~~2. Clinical preparation of faculty.~~

~~3. Behavioral objectives for students in clinical rotation.~~

~~4. Contract with clinical agency.~~

~~5. Physical setting for student experience.~~

~~6. Patient/client safety.~~

~~7. The student/faculty ratio (excluding observational experiences) shall not exceed a maximum of ten (10) to one (1) in the~~

~~clinical practice experience.~~]

(j) Submission of the "Certified List of Program of Kentucky Nursing Graduates", as incorporated by reference in 201 KAR 20.070, upon student completion of all requirements for a degree, diploma or certificate.

(k) Develop and maintain an environment conducive to the teaching and learning process.

(l) Facilitate the development of long-range goals and objectives for the nursing program.

(m) Insure that equipment, furnishings, and supplies are current and replaced in a timely manner.

(n) Ensure that the nurse faculty has sufficient time to accomplish those activities related to the teaching-learning process.

(o) Coordination of an orientation to the roles and responsibilities of full-time, adjunct nurse faculty, and clinical instructors to the program of nursing and, as appropriate, to clinical facilities so that the mission, goals, and expected outcomes of the program are achieved.

(p) Facilitates regular communication with the full and part time nurse faculty and clinical instructors to facilitate communication and participation in the planning, implementation, and evaluation of the program of nursing.

(q) Ensure that recruitment materials provide accurate and complete information to prospective students about the program including:

1. The nature of the program, including course sequence, prerequisites, corequisites, and academic standards;

2. The length of the program;

3. The current cost of the program;

4. The transferability of credits to other public and private institutions in Kentucky.

(r) Conducts or participates in the written evaluation of each nurse faculty member, clinical instructor, and support staff according to published criteria, regardless of contractual or tenured status.

(s) Ensure the adherence to the written critera for the selection and evaluation of clinical facilities utilized by the program of nursing.

(t) Maintain current knowledge of requirements pertaining to the program of nursing and licensure as outlined in the administrative regulations of the board.

(u) Attend a Board of Nursing Program Administrators Orientation within one (1) year of appointment.

(v) Develop a structure to allow nurse faculty to assist in the governance of the program.

(w) Insures that the curriculum is implemented as submitted to the board.

(4) [~~Provision for~~] A system of official records and reports essential to the operation of the program of nursing shall be maintained according to institutional policy. Provisions shall be made for the security and protection of records against loss and unauthorized distribution or use. The system shall include records of:

(a) Currently enrolled students to include admission materials, courses taken, grades received, scores for any standardized tests, and clinical performance records [~~Enrolled and previously enrolled students~~].

(b) Minutes of faculty and committee [~~Program~~] meetings.

(c) Faculty records including validation of current licensure to practice as a Registered Nurse in Kentucky, evidence of fulfilling the requirements established in 201 KAR 20:310, orientation to the governing institution and the program of nursing, performance evaluation for faculty employed more than one (1) year [~~members~~].

(d) Systematic plan of [~~Program development, proposals, recommendations, plans and~~] evaluation.

(e) Graduates of the program of nursing.

(f) Administrative records and reports from accrediting agencies. (5) Official publications shall [~~which~~] include:

(a) Description of the governing institution and program of nursing.

(b) Policies on admission, progression, dismissal, graduation and student grievance procedures.

(c) Description of student services.

(6) [~~Written personnel policies for the faculty which include:~~

~~(a) Position descriptions.~~

~~(b) Faculty rights and responsibilities.~~

~~(c) Faculty evaluation process.~~

~~(7)~~] Clerical assistance. The number of clerical assistants shall be determined by the number of students and faculty. There shall be a minimum of one (1) full time clerical person assigned to the program of nursing, with additional assistance as needs are documented.

(7) Nurse faculty, full-time and part-time, shall have the authority and responsibility in the following areas:

(a) To plan, implement, evaluate, and update the program;

(b) Assist in the design, implementation, evaluation, and updating of the curriculum using a written plan;

(c) Participate in the development, implementation, evaluation, and updating of policies for student admission, progression, and graduation in keeping with the policies of the governing institution;

(d) Participate in academic advisement and guidance of students;

(e) Provide theoretical instruction and clinical learning experiences;

(f) Evaluate student achievement of curricular outcomes related to nursing knowledge and practice;

(g) Develop and implement student evaluation methods and tools to measure the progression of the student's cognitive, affective, and psychomotor achievement in course and clinical outcomes based on published rubrics and sound rationale;

(h) Participate in academic and professional level activities that maintain the faculty member's competency and professional expertise in the area of teaching responsibility;

(i) Establish clinical outcomes within the framework of the course;

(j) Communicate clinical outcomes to the student, clinical instructor, preceptor, and staff at the clinical site;

(k) Assume responsibility for utilizing the criteria in the selection of clinical sites and in the evaluation of clinical experiences on a regular basis;

(l) Evaluate the student's experience, achievement, and progress in relation to course or outcomes, with input from the clinical instructor and preceptor, if utilized.

(8) Clinical instructors shall have governance in the following areas:

(a) Design, at the direction of the nurse faculty member, the student's clinical experience to achieve the stated outcomes of the nursing course in which the student is enrolled;

(b) Clarify with the nurse faculty member the role of the preceptor, course responsibilities, course/clinical outcomes, a course evaluation tool; and situations where collaboration and consultation are needed; and

(c) Participate in the evaluation of the student's performance by providing information to the nurse faculty member and the student regarding the student's achievement of established outcomes. [~~be secretarial and clerical assistants to meet the needs of the program.~~]

SUSAN H. DAVIS, President

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: July 10, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD. A public hearing on this administrative regulation shall be held on August 22, 2007, at 1 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets organization and administration standards for RN and LPN prelicensure programs of nursing

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for these programs. They require the governing institution to designate a program administrator with a specific allotment of time to oversee the program and the necessary resources. They modernize the standards for the successful administration of these programs.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes By setting appropriate standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:270. Programs of nursing surveys.

RELATES TO: KRS 314.111[~~(2), (3), 314.131(1)~~]

STATUTORY AUTHORITY: KRS 314.131(1) [~~Chapter 314~~]

NECESSITY, FUNCTION, AND CONFORMITY: It is necessary that site visits [~~surveys~~] be made by a board representative to evaluate compliance with board standards by agencies offering or planning to offer programs of nursing.

Section 1. Types of Site Visits. (1) A facility visit is made to a program of nursing for the sole purpose of determining if the physical facility meets requirements as set by the board's administrative regulations.

(2) An evaluative visit is made to a program of nursing for the purpose of evaluating a program's progress and approval status.

(3) A follow-up visit is made to a program of nursing to verify that actions requested by the board have been implemented as stated.

(4) A consultative visit is made to a program of nursing at the request of the program or governing institution. The requesting entity shall submit in writing specific objectives for the visit prior to the visit.

Section 2. Evaluation of a Program of Nursing by a National Nursing Accrediting Body. (1) The board may accept accreditation by a national nursing accrediting body recognized by the United States Department of Education as evidence of compliance with the standards set by the administrative regulations of the board. The program of nursing shall submit to the board a copy of the self-evaluation report submitted to the national nursing accrediting body.

(2) A program of nursing that seeks accreditation from a national nursing accrediting body shall submit evidence of that accreditation to the board within thirty (30) days of receiving the report from the national nursing accrediting body. The program of nursing shall submit notice of any change in its accreditation to the board within thirty (30) days of receipt of the notice from the na-

tional nursing accrediting body. Failure to submit notice of accreditation results within thirty (30) days may result in a site visit.

(3) A program of nursing that has been granted approval based on a national nursing accrediting body's accreditation shall comply with 201 KAR 20:260 through 20:360.

(4) The program administrator shall submit to the board any report from the national nursing accrediting body citing deficiencies or recommendations at the time the report is received by the program of nursing.

(5) The program of nursing shall submit copies of interim reports requested by the national nursing accrediting body to the board.

(6) If the program of nursing receives notice from the national nursing accrediting body addressing interim reports, a copy of all communication shall be sent to the board within thirty (30) days of receiving the report.

(7) If the program of nursing is accredited for less than the maximum accreditation period, the program shall provide the board with a copy of the report addressing the items of noncompliance within thirty (30) days of receipt from the national nursing accrediting body. The board may require additional reports regarding noncompliance.

(8) The board may grant full approval for a period of time not to exceed the approval period of the national nursing accrediting body.

Section 3 [~~Surveys of~~] Programs of Nursing Site Visits. (1) Programs of nursing not accredited by a national nursing accrediting body shall be subject to a site visit [~~granted full approval status by the board will be surveyed~~] at least every eight (8) years.

(2) A site visit date shall be established in collaboration with the program of nursing. A specific list of information required for review shall be sent to the program of nursing prior to the site visit.

(3) Prior to the site visit, the program of nursing shall submit a self-evaluation report that provides evidence of compliance with the standards set forth in 201 KAR 20:260 through 360.

(4) Site visits to [~~Surveys of~~] programs of nursing holding full approval status may be scheduled [~~rescheduled~~] based upon any of the following:

(a) A complaint received from faculty, students, or the general public relating to a violation of 201 KAR 20:260 through 20:360.

(b) Denial, withdrawal, or change in the program accreditation status by a national nursing accrediting body or a general academic accrediting agency.

(c) Failure to obtain approval of changes that require approval prior to implementation.

(d) Providing false or misleading information to students or the public concerning the program of nursing.

(e) Violation of the board's administrative regulations.

(f) A change in or the inability to secure or retain a qualified program administrator or faculty.

(g) Failure to provide clinical experiences necessary to meet the outcomes of the program of nursing.

(h) Evidence of a high student or faculty attrition rate as compared to the state average.

(i) Failure to maintain an annual NCLEX pass rate for first time testers of at least eighty-five (85) percent for two (2) consecutive years.

(j) A change in the ownership or organizational restructuring of the governing institution.

(k) [~~Length of time since previous survey by a board representative~~

~~(b) Curriculum change.~~

~~(c) Change in use of clinical facilities~~

~~(d) Student attrition rate.~~

~~(e) Licensure examination pass-rate.~~

~~(f)~~] As deemed necessary by the board to determine compliance with administrative regulations and requirements.

(5) [~~(3)~~] The scheduling of site visits [~~surveys~~] during [~~the period of~~] initial approval shall be based on board required reports and on evaluations submitted by the program [~~nursing~~] administrator[~~, type of program of nursing planned,~~] and as required by administrative regulation.

(6) [~~(4)~~] The scheduling of site visits [~~surveys~~] of governing institutions planning to establish a program of nursing or a secondary or distance learning site shall be based upon the [~~preliminary report~~] information submitted within the [~~and date of receipt of~~] proposal for the new program as required by the board and by administrative regulation.

(7) The board shall have the authority to visit a program of nursing on an announced or unannounced basis.

Section 4. Board Action Following Site Visits. (1) The board shall evaluate a program of nursing in terms of its compliance with administrative regulations 201 KAR 20:260 through 20:360.

(2) Following a site visit and prior to board consideration, a draft of the site visit report shall be made available to the program administrator for review and correction of factual data.

(3) Following the board's review and decision, a letter shall be sent to the program administrator and the head of the governing institution regarding the approval status of the program of nursing.

(4)(a) If the board determines that an approved program of nursing is not maintaining the standards required for approval as set by administrative regulations 201 KAR 20:260 through 20:360, the board shall give written notice specifying the deficiencies and shall designate the period of time in which the deficiencies shall be corrected.

(b) If the deficiencies have not been corrected in the designated period of time, the board shall impose a fee of $5000 until the deficiencies are corrected by a second designated period of time.

(c) If the deficiencies are not corrected within the second designated period of time, the board shall schedule an administrative hearing pursuant to KRS Chapter 13B to determine if the program's approval status should be withdrawn. [~~(5) Approved programs of nursing with a licensure examination pass-rate less than eighty-five (85) percent shall be surveyed by the board as required by administrative regulation and as deemed necessary by the board.~~

~~(6) Programs of nursing desiring to establish nursing extension programs shall be surveyed according to 201 KAR 20:290, Standards for prelicensure registered nurse and practical nurse extension programs.~~]

SUSAN H. DAVIS, President

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: July 10, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2007, at 1 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does. It sets standards for site visits to review prelicensure programs of nursing for compliance with board regulations.

(b) The necessity of this administrative regulation: The board is

required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes. By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for site visits. The term site visit is used instead of surveys. The types of visits is set out and when and how visits are to be made.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It sets a new fee for failure to correct deficiencies by the program of nursing

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:280. Standards for initial approval of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3), 314.131(2)

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.111 requires the board to review, approve and possibly withdraw approval for schools of nursing. This administrative regulation establishes the standards for the development and approval of programs which prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states

Section 1. Establishment of a Program of Nursing. (1) The governing institution may receive consultation from the board prior to establishing [~~filing an application form to establish~~] a program of nursing

(2) The governing institution that desires to establish and conduct the program of nursing shall be accredited as outlined in 201 KAR 20:260, Section 1.

Section 2. Letter of Intent. (1) The governing institution shall submit to the board a letter of intent to establish a prelicensure program of nursing [~~the "Application to Establish a Prelicensure Program of Nursing"~~] and the fee required by 201 KAR 20:240. The letter of intent and any additional [~~application form and the preliminary~~] information shall be submitted to the board no less than one (1) year prior to the anticipated opening date for the program.

(2) The proposal shall be completed under the direction or consultation of a registered nurse who meets the qualifications of a program administrator as outlined in 201 KAR 20:310.

(3) The letter of intent [~~application form~~] shall include:

(a) Approval from the governing body of the institution proposing the program of nursing or other empowered approval bodies as applicable.

(b) Data that documents [~~Documentation of~~] the need for the level of nurses in the areas to be served by the proposed program [~~governing institution~~].

(c) Investigate the projected impact on the operation of programs of nursing within a fifty (50) mile radius. Evidence that an introductory letter has been sent to the impacted programs.

(d) Documentation from cooperating healthcare agencies in the community that they will provide support for the creation of the program of nursing. This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the program. [~~Consideration given to existing programs of nursing in the area.~~

~~(d) Evidence of community support for the program of nursing~~]

(e) General information about the governing institution including the mission, ownership, method of financing, accreditation,

enrollment, area served, and institutional faculty qualifications and resources.

(f) Timeline for the hiring of a full time program administrator, admission of students, and projected graduation of the first class [~~Evidence of a pool of potential applicants for admission~~].

(g) Evidence of a sound financial base and demonstrated financial stability [~~resources~~] available for planning, implementing, [~~establishing~~] and maintaining the proposed program of nursing.

(h) A copy of the curriculum vitae of the registered nurse involved in the planning [~~Documentation of clinical facilities and agencies willing to participate in the program of nursing~~].

(i) Description and rationale for the proposed type of program of nursing.

(4) Upon approval of the letter of intent by the board, the governing institution shall be notified in writing that it can move to the proposal phase. During the proposal phase, the governing institution shall appoint a qualified program administrator and provide appropriate resources, consultants, and faculty to develop the proposed program plan.

Section 3. Proposal Phase. (1) [~~The board or any interested party may request that a public hearing be held within thirty (30) days by the board on the application to establish a program of nursing.~~

~~(5) The governing institution shall be notified in writing if a hearing is requested. If a request is made, the board shall not act on the program proposal until after the hearing is held and consideration is given to the hearing testimony.~~

~~(6)~~] A completed program proposal shall be submitted to the board by the governing institution for approval no less than eight (8) months prior to the anticipated opening date for a program of nursing.

(2) The program shall not be announced, advertised, or students admitted to the program of nursing until developmental approval status has been granted by the board.

(3) The program proposal shall include the following information:

(a) Philosophy, mission, and learning outcomes [~~objectives~~] of the governing institution.

(b) Organizational chart of the governing institution and written plan which describes the organization of the program of nursing and its relationship to the institution.

(c) Proposed philosophy, mission, and learning outcomes for the proposed program [~~objectives, and conceptual or organizing framework of the program of nursing~~].

(d) Curriculum design including proposed course sequence and credit hours delineating those credits assigned to theory and clinical.

(e) Recruitment plan and five (5) year projection for student enrollment.

(f) A five (5) year plan [~~projection~~] for recruiting and retaining [~~employment of~~] qualified nurse faculty.

(g) Proposed job description for the program administrator reflecting authority and responsibility [~~Description of educational and clinical facilities~~].

(h) Description of faculty offices, classrooms, clinical skills [~~nursing~~] laboratory, library facilities, conference rooms and learning resources.

(i) Description of support services for students, to include provision of health services or evidence of an emergency plan for care, academic advisement, student services, mechanism for obtaining learning resources [~~personal counseling~~], and financial aid.

(j) Availability and willingness of accredited agencies to provide clinical experiences across the curriculum.

(k) Policies and procedures for student selection and progression.

(l) Plan for clerical support available to the program for planning, implementing, and maintenance of the program.

(m) General plan for an on-going, research based planning and evaluation process that incorporates a systematic review of the program that results in continuing improvement.

(n) Description of financial resources to support the program including a budget for the first three years with projected revenues and expenditures and the amount of resources going to institutions or organizations for contractual or support services.

(4) [~~Plans for use of clinical facilities appropriate to the type of program of nursing.~~

~~(k) Evidence of cooperative planning with other educational programs that use the same clinical facilities.~~

~~(l) Admission criteria.~~

~~(m) General plan for evaluation of the program.~~

~~(n) Two (2) year budget projection for the program.~~

~~(7)~~] A representative of the board shall arrange a site visit to [~~survey~~] the governing institution and the program [~~school~~] of nursing to clarify, verify, and amplify materials included in the proposed program plan. Prior to approval being granted, a written report shall be submitted to the board by the board representative who conducts the site visit. This site visit shall not be construed as affirming that the proposed program plan meets requirements.

(5) [~~and submit a written report to the board.~~

~~(8)~~] The governing institution shall be notified in writing of action taken by the board on the proposal and the site visit [~~survey~~] report. If the board determines that all requirements have been met, the program shall be granted developmental status. If the board determines that all requirements have not been met, the program may be granted developmental status based on compliance with the terms and conditions identified in the site visit report. If the program does not comply with the terms and conditions identified in the site visit report, the program shall be denied approval.

(6) [~~(9)~~] Approval to establish a program of nursing may be withdrawn if program requirements are not met and if a class is not enrolled within eighteen (18) months after the board granted developmental approval. If the board determines that a proposed program does not comply with all administrative regulations of the board, developmental or initial approval may be withdrawn. The governing institution shall be notified in writing of the withdrawal of developmental or initial approval.

(7) [~~(10)~~] Students shall not be admitted to the program of nursing until developmental approval has been granted by the board.

(8) Failure to submit board required reports within the designated time period may result in the rescinding of developmental or initial approval status.

(9) [~~(11)~~] Employment of program [~~nurse~~] administrator and faculty.

(a) The nurse administrator shall be the first faculty member employed, and shall have assumed full time responsibilities for the program prior to submission of the proposal to the board [~~before the first class begins nursing major courses~~].

(b) The faculty as outlined in 201 KAR 20:310 shall be employed in sufficient numbers to prepare for the development of the curriculum component of the program.

(10) Any deviation from the initial curriculum plan approved within the proposal [~~before the first class begins nursing major courses.~~

~~(c) Sufficient numbers of qualified faculty shall be employed to implement the approved proposal.~~

~~(d) A faculty qualification form shall be submitted to the board by the nurse administrator for each faculty member upon employment.~~

~~(12) The curriculum pattern, including brief course descriptions and credit allotment,~~] shall be approved by the board [~~on or before a date specified by the board~~] before the first class begins course requirements.

(11) [~~(13)~~] Written contracts for use of clinical facilities shall be [~~duly~~] executed prior to admission to the first nursing course.

(12) [~~(14)~~] The program of nursing [~~governing institution~~] shall submit progress and evaluation reports which demonstrate implementation of the approved proposal as required by the board.

(13) Site visits may be conducted as deemed necessary by the board.

Section 4. Approval Status. (1) The status of the program automatically moves from developmental to initial approval upon admission of the first class. It is the responsibility of the program of nursing to notify the board of the admission of the first class.

(2) Full approval is the designation granted to a program of nursing that has implemented the approved proposal and that con-

tinues to meet standards.

(3) A program with initial approval is eligible for full approval upon graduation of the first class providing there is evidence that standards have been met.

(4) The program shall notify the board in writing thirty (30) days prior to the graduation of the first class.

(5) Within ninety (90) days of graduation of the first class, the faculty shall conduct a self study that evaluates the establishment of the program of nursing to the approved proposal and submit a written report to the board prior to consideration for full approval.

(6) The decision to grant full approval shall be based on review of the following:

(a) The program evaluation by the faculty and the program administrator;

(b) Site visit report by the board representative conducted to evaluate program compliance with administrative regulations; and

(c) Other facts that pertain to the program and reports deemed necessary to document that standards have been met.

~~[Section 2. Programs and related units that meet standards shall retain approval. (1) Approval purpose. The approval process shall be conducted by the board to assure the public that approved programs of nursing meet board requirements, to determine that minimum standards are met by programs, to prepare graduates for admission to the licensure examination, to facilitate licensure by endorsement, to encourage development and improvement of nursing education.~~

~~(2) Approval types and requirements.~~

~~(a) Developmental approval is the designation granted to a proposed program of nursing to continue development of plans for program implementation.~~

~~(b) Initial approval is the designation granted to a new program of nursing upon admission of the first class, provided the date of enrollment is within eighteen (18) months after the board approves the proposal. During the period of initial approval reports documenting implementation of the approved proposal shall be submitted as required by the board.~~

~~(c) Full approval is the designation granted to a program of nursing that has implemented the approved proposal and which continues to meet standards.~~

~~1. A program with initial approval is eligible for full approval upon graduation of the first class providing there is evidence that standards have been met.~~

~~2. The faculty shall conduct a self-study which evaluates the establishment of the program of nursing according to the approved proposal, and submit a written report to the board prior to consideration for full approval.~~

~~3. The decision to grant full approval shall be based upon review of the following:~~

~~a. The program evaluation by the faculty and nurse administrator;~~

~~b. Licensure examination results;~~

~~c. Survey report by the board representative; and~~

~~d. Other facts that pertain to the program, and reports deemed necessary to document that standards have been met.~~

~~(d) Conditional approval is the designation granted to a program of nursing when standards are not met.~~

~~1. The board shall notify the governing institution and the program of nursing when being assigned conditional approval.~~

~~2. The board shall specify deficiencies of the program and a period of time in which standards shall be met.~~

~~3. The board may require the program to limit the number of students that may be admitted to the program of nursing for a specified period of time, prohibit the admission of students to the program of nursing for a specified period of time, or to take other actions as deemed appropriate by the board to assist the program of nursing to meet standards.~~

~~(e) Program approval or accreditation awarded by another organization may be recognized by the board, provided the organization's approval standards for programs of nursing have been determined by the board to be equivalent to or to exceed the full approval standards of the board.~~

~~Section 3. Withdrawal of Approval. The board may hold a hearing pursuant to KRS 314.111(3) for a program of nursing that fails to comply with Section 2(2)(d) of this administrative regulation. The purpose of the hearing shall be to determine whether or not to withdraw approval from the program of nursing.~~

~~(1) If there is evidence of failure to develop a new program according to the approved proposal, the board may withdraw approval.~~

~~(2) If the decision is made to withdraw approval of the program, provision shall be made by the governing institution for students enrolled in that program to complete the requirements for graduation in order to be eligible to take the licensure examination.~~

~~(3) The governing institution shall be notified in writing of the board's decision. That notification shall cause the institution to make provisions for students or records, and to discontinue the program at the time designated by the board.~~

~~(4) Students completing a program of nursing which is not approved by the board shall not be admitted to the licensure examination.~~

~~Section 4. Voluntary Closure of Approved Program; Change in Ownership or Organization. (1) A governing institution that considers the closing of a program, shall confer with the board and shall notify the board in writing stating the reason, the procedure to be adopted, and date for closing the program. The board shall be kept apprised of the procedures for closing.~~

~~(2) A governing institution may choose one (1) of the following procedures for closing a program:~~

~~(a) The governing institution shall continue the program until the last class enrolled is graduated.~~

~~1. The program shall continue to meet the standards for approval until all official students who meet requirements have graduated.~~

~~2. The official closing of the program is the date on the degree, certificate, or diploma of the last graduate.~~

~~3. The governing institution shall notify the board in writing of the official closing date.~~

~~(b) The governing institution shall close the program after the transfer of students to other approved programs.~~

~~1. The program shall continue to meet the standards required for approval until all students are transferred.~~

~~2. The names of students who have been transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.~~

~~3. The date of the last student transfer shall be the official closing date of the program.~~

~~(3) Custody of records.~~

~~(a) The governing institution which continues to operate retains responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.~~

~~(b) The governing institution which ceases to exist shall transfer the academic transcript of each student and graduate to the board office for safe keeping.~~

~~1. The transcript of the students or graduates shall identify the date on which the program closed.~~

~~2. The board shall be consulted about the disposition of all other program records.~~

~~(4) Change in ownership or organization of governing institution.~~

~~(a) The governing institution shall notify the board in writing of any change in ownership or organization.~~

~~(b) Approval of the program shall continue under new ownership provided the approval standards continue to be met.~~

~~(c) The governing institution which changes organizational structure shall retain program approval provided requirements continue to be met.~~

~~Section 5. Incorporation by Reference. (1) The Application to Establish a Prelicensure Program of Nursing, 9/99, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

SUSAN H. DAVIS, President
APPROVED BY AGENCY: June 14, 2007
FILED WITH LRC: July 10, 2007 at 10 a.m.

A public hearing on this administrative regulation shall be held on August 22, 2007, at 1 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for the initial approval of new prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for initial approval of RN and LPN programs. The procedure and steps necessary to take are clarified. The information required to be submitted at each step is set out. The types of approval status are included.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including.

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:290. Standards for prelicensure registered nurse and practical nurse secondary or distance learning sites [~~extension programs~~].

RELATES TO: KRS 314.011(5), (9), 314.111(1), (2), (3)
STATUTORY AUTHORITY: KRS Chapter 314
NECESSITY, FUNCTION, AND CONFORMITY: It is necessary to establish standards for the development and approval of nursing extension programs which prepare graduates for admission to the licensure examination and to facilitate endorsement of licensure status to other states.

Section 1. Definition. (1) "Secondary or distance learning site" means a nonmain location where educational activities are conducted and meets one (1) of the following provisions:

(a) A student may obtain fifty (50) percent or more credits towards a degree or diploma program;

(b) A student may obtain fifty (50) percent or more credits to-

wards a degree or diploma program via an electronic method; or

(c) Is geographically close to the main campus that oversees the learning site such that students must utilize services provided at the main campus.

Section 2. Establishment of a Nursing Secondary or Distance Learning Site. (1) The addition of a secondary or distance learning site shall not be considered unless the program of nursing meets the following:

(a) The governing institution that establishes and conducts the program of nursing shall be accredited as outlined in 201 KAR 20:260, Section 1.

(b) The program of nursing shall hold full approval for a minimum of three (3) years.

(c) First time test takers from the program of nursing shall have achieved an overall pass rate of at least eighty-five (85) percent on the NCLEX examination for a minimum of three (3) consecutive years.

Section 3. Letter of Intent. (1) The governing institution shall submit to the board a letter of intent to establish a secondary or distance learning site along with the fee required by 201 KAR 20:240. The letter of intent and additional preliminary information shall be supplied to the board at least six (6) months prior to the desired admission of the first class.

(2) The letter of intent shall be completed under the direction or consultation of a registered nurse who meets the qualifications of a program administrator as outlined in 201 KAR 20:310.

(3) The letter of intent shall include:

(a) The name of the degree or diploma granting institution accredited by an accrediting body recognized by the United States Department of Education;

(b) The consent of the approving board or body of the governing institution;

(c) General information about the governing institution including the mission, ownership, method of financing, accreditation, enrollment, area served, and institutional faculty qualifications and resources;

(d) Documentation of the need for the level of nurses in the area to be served by the secondary or distance learning site;

(e) Documentation from cooperating healthcare agencies in the community that will provide support for the creation of the secondary or distance learning site. This documentation shall include evidence of the agencies' intention to contribute to the achievement of the clinical objectives of the site;

(f) Investigation of the projected impact on the operations of program of nursing within a fifty (50) mile radius of the site. Evidence that an introductory letter was sent to the impacted programs shall be included; and

(g) A timeline for the admission of students and graduation of the first class.

(4) Upon approval of the letter of intent by the board, the governing institution shall be notified in writing.

Section 4. Proposal Phase. (1) The secondary or distance learning site shall not be announced, advertised, or students admitted until the proposal has been approved and developmental status has been granted by the board.

(2) Developmental status shall be granted to the proposal to establish a secondary or distance learning site upon presentation to the board of evidence of the following:

(a) Participation by the program administrator in planning the secondary or distance learning site;

(b) The name and qualifications of the program administrator;

(c) The name and qualifications of the assistant program administrator as defined in 201 KAR 20:310;

(d) Philosophy, purpose, and objectives of the governing institution, program of nursing, and the proposed secondary or distance learning site;

(e) Administrative and academic policies of the governing institution, program of nursing, and the proposed secondary or distance learning site;

(f) Identification of any differences between the policies to be utilized at the secondary or distance learning site as compared to the primary location;

(g) Organizational plan and administrative policies for implementation of the secondary or distance learning site;

(h) Adequacy and availability of student services consistent with those at the main campus;

(i) Plan for employment of qualified faculty who shall be employed sufficiently in advance of the opening date to provide for program planning and development and for orientation to the facilities;

(j) An identified curriculum and conceptual or organizing framework to be used and any planned revisions;

(k) The availability and willingness of accredited agencies to provide clinical experiences across the curriculum;

(l) Evidence of availability of adequate finances to support the secondary or distance learning site which shall include:

1. Sufficient financial resources as identified in an approved budget for the secondary or distance learning site;

2. The source of the funding identified;

3. The stability of the source of funding to maintain the operation of the secondary or distance learning site; and

4. Any stipulations for use of any special finances;

(m) Evidence of the availability of adequate classrooms, laboratories, conference rooms, and library resources appropriate for the needs of the secondary or distance learning site which shall include:

1. Sufficient space and equipment allocated for use of faculty and students as outlined in 201 KAR 20:350; and

2. Library and learning resources that support achievement of meeting curricular objectives and future plans for maintaining these resources;

(n) A plan for evaluation of the secondary or distance learning site consistent with 201 KAR 20:360; and

(o) The effects of the secondary or distance learning site on the governing institution and the program of nursing.

Section 5. Proposal Review Process. (1) A completed program proposal shall be submitted to the board by the governing institution no less than six (6) months prior to the anticipated opening date for the secondary or distance learning site.

(2) A representative of the board shall conduct a site visit to the secondary or distance learning site and submit a written report to the board.

(3) The governing institution shall be notified in writing of action taken by the board on the proposal and the site visit.

(4)(a) If the board determines that all requirements have been met, the program shall be granted developmental status.

(b) If the board determines that all requirements have not been met, the program may be granted developmental status based on compliance with the terms and conditions identified.

(c) If the program does not comply with the terms and conditions identified, approval shall be denied.

(5) No students shall be admitted to the secondary or distance learning site until developmental status has been granted by the board.

(6)(a) Approval to establish a secondary or distance learning site may be withdrawn if requirements are not met and if a student class is not enrolled within eighteen (18) months.

(b) If the board determines that a proposed program does not comply with all administrative regulations, developmental or initial approval may be withdrawn.

(c) The governing institution shall be notified in writing of the withdrawal of developmental or initial approval.

Section 6. Approved Secondary or Distance Learning Sites. (1) Reports shall be submitted to the board in accordance with 201 KAR 20:360, Section 3.

(2) The status of the proposal automatically moves from developmental to initial approval upon admission of the first class. It is the responsibility of the program of nursing to notify the board of the admission of the first class.

(3) Full approval is the designation granted to a secondary or distance learning site that has implemented the proposal and that continues to meet standards.

(4) A secondary or distance learning site is eligible for full ap-

proval upon graduation of the first class providing there is evidence that standards have been met.

(5) The program of nursing shall notify the board in writing at least thirty (30) days prior to the graduation of the first class.

(6) Within ninety (90) days of graduation of the first class, the faculty shall conduct a self study that evaluates the establishment of the secondary or distance learning site according to the proposal and shall submit a written report to the board prior to consideration for full approval.

(7) The decision to grant full approval shall be based upon a review of the following:

(a) the program evaluation by the faculty and the program administrator;

(b) the site visit report by the board representative conducted to evaluate compliance with administrative regulations; and

(c) other facts that pertain to the secondary or distance learning site and reports deemed necessary to document that standards have been met.

(8) The retention of full approval of a secondary or distance learning site is contingent on meeting standards as set forth in 201 KAR 20:260 through 20:360. [~~Establishment of a Nursing Extension Program. (1) The governing institution shall submit to the board a completed application form which is supplied by the board.~~

~~(2) A proposal to establish a nursing extension program shall not be considered until evidence of the following is presented:~~

~~(a) A minimum of three (3) consecutive licensure examination pass rates of eighty-five (85) percent immediately prior to submission of the application form.~~

~~(b) Conference with a representative of the board.~~

~~(c) Consent of approving board or body of the governing institution.~~

~~(d) Participation by nurse administrator of the program of nursing in planning the extension program.~~

~~(3) The proposal for an extension program should address the following:~~

~~(a) Statement of need for graduates.~~

~~1. Documentation of need for nurses in the areas to be served by the governing institution.~~

~~2. Documentation of an adequate pool of qualified applicants interested in the extension program.~~

~~(b) Designated responsibilities of cooperating parties, if applicable.~~

~~1. Philosophy, purpose, and objectives of the governing institution, approved program of nursing, and the proposed extension program.~~

~~2. Administrative and academic policies of the governing institution, approved program of nursing, and the proposed extension program.~~

~~3. Organizational plan and administrative policies for implementation of the extension program.~~

~~4. Adequacy of arrangements made to provide services.~~

~~(c) Name of degree or diploma granting institution accredited by the southern association of colleges and schools or appropriate accrediting body.~~

~~(d) Name and qualifications of the nurse administrator.~~

~~(e) Plan for employment of qualified faculty. Faculty shall be employed sufficiently in advance of opening date to provide for program planning and development and for orientation to facilities.~~

~~(f) Identified curriculum and conceptual or organizing framework to be used, and any planned revisions.~~

~~(g) Evidence of availability of clinical facilities accredited by the joint commission on accreditation of hospitals or other appropriate approval bodies.~~

~~1. Documentation of planning for utilization of accredited facilities.~~

~~2. Documentation from clinical facilities agreeing to accommodate students.~~

~~3. Availability and provision of services to meet curricular objectives within clinical facilities to be utilized.~~

~~4. Cooperative planning for use of clinical facilities with other programs of nursing.~~

~~(h) Evidence of availability of adequate finances to support the extension program.~~

~~1. Sufficient financial resources as identified in an approved budget for the extension program.~~

~~2. Source(s) of funding identified.~~

~~3. Stability of source(s) of funding to maintain operation of the extension program.~~

~~4. Stipulations for use of special finances, if applicable.~~

~~(i) Evidence of availability of adequate classrooms, laboratories, conference rooms, and library resources appropriate for the needs of the extension program.~~

~~1. Sufficient space and equipment allocated for use of faculty and students.~~

~~2. Allocated space is conducive to the teaching and learning process.~~

~~3. Library and learning resources which support achievement of meeting curricular objectives.~~

~~(j) Plan for evaluation of the total extension program including:~~

~~1. Student achievement.~~

~~2. Review of program objectives.~~

~~3. Input from faculty, students, administrators, and clinical faculty employees.~~

~~4. Percentage pass rate of graduates on the licensure examination.~~

~~5. Identification and analysis of student attrition rate.~~

~~6. Effects of the extension program on the governing institution and the program of nursing.~~

~~Section 2. Proposal Review Process. (1) A completed program proposal shall be submitted to the board by the governing institution no less than eight (8) months prior to the anticipated opening date for the nursing extension program.~~

~~(2) A representative of the board shall survey the extension program and submit a written report to the board.~~

~~(3) Developmental approval shall be dependent upon the appointment of qualified faculty and acceptance of the program proposal which includes provision for evaluation of the program.~~

~~(4) The governing institution shall be notified in writing of action taken by the board on the proposal and survey report.~~

~~(5) No students shall be admitted to the program of nursing until developmental approval has been granted by the board.~~

~~(6) Approval to establish an extension program may be withdrawn if program requirements are not met and if a student class is not enrolled within eighteen (18) months after the board granted developmental approval. The governing institution shall be notified in writing of the withdrawal of developmental approval.~~

~~Section 3. Approved Nursing Extension Program. (1) Required reports shall be submitted to the board in accordance with Section 3 of 201 KAR 20:360, Evaluation of prelicensure registered nurse and practical nurse programs.~~

~~(2) The retention of the approval designation of an extension program is contingent upon meeting standards as set forth by the board.~~]

SUSAN H. DAVIS, President

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: July 10, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2007, at 1 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Nathan Goldman, General Counsel,

Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for secondary and distance learning sites of prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for secondary and distance learning sites. It defines those terms and sets out the procedures for a program of nursing to establish such a site.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:310. Faculty for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111, 314.470

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.131(1) authorizes the Board of Nursing to promulgate administrative regulations necessary to enable it to carry into effect the provisions of KRS Chapter 314. This administrative regulation establishes standards for faculty of programs of nursing which prepare graduates for licensure as registered nurses or practical nurses.

Section 1. Definition. (1) "Nursing experience" means employment in a position that requires the individual to hold an active nursing license, such as nursing clinical practice, nursing administration, nursing education, or nursing research.

Section 2. Faculty for Prelicensure Registered Nurse Programs. (1)(a) The faculty shall include a program [~~nurse~~] administrator and shall include at least two (2) nurse faculty (one (1) of whom may also serve as program [~~nurse~~] administrator). The faculty may include clinical instructors in the major areas of nursing practice. The faculty shall be adequate in number to implement the curriculum as determined by program outcomes, course objectives, the level of the students, the [~~and composition to assess, plan, implement, and evaluate the program and its curriculum in relation to the stated purpose, philosophy, objectives, and number~~] of students and classes admitted annually, and any additional secondary site [~~extension, experimental~~], or continuing education programs conducted, and the educational technology utilized.

(b) The program [~~nurse~~] administrator and all nurse faculty and clinical instructors shall be appointed by and be responsible to the governing institution of the program of nursing.

(c) A program of nursing shall designate an assistant program administrator for a secondary site.

(d) A program shall develop and implement a plan of organization and administration that clearly delineates the lines of authority, accountability, and responsibility among all program locations and assistant program administrators.

(2) The program [~~nurse~~] administrator for a Registered Nurse program shall have the following qualifications:

(a) A minimum of a masters or higher degree in nursing from an accredited college or university.

(b) A minimum of five (5) years of nursing experience within the immediate past ten (10) years and demonstrated leadership experience [~~in administration~~].

(c) A minimum of two (2) years of full time teaching experience at or above the academic level of the program of nursing.

(d) An unencumbered current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.

(3) The program administrator for a Practical Nurse program shall have the following qualifications:

(a) A baccalaureate or higher degree with a major in nursing from an accredited college or university.

(b) A minimum of five (5) years of nursing experience within the past ten (10) years with demonstrated leadership experience.

(c) Current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.

(d) A minimum of two (2) years full time teaching experience at or above the academic level of the program of nursing.

(e) A current knowledge of nursing practice at the practical or vocational level.

(4)(a) [~~Newly appointed~~] Nurse faculty or an assistant program administrator in a baccalaureate degree prelicensure registered nurse program shall hold a degree from an accredited college or university which shall include:

1. A masters degree within the discipline of [~~with a major in~~] nursing or have completed that portion that would be equivalent to a masters in nursing degree; or

2. A baccalaureate degree with a major in nursing and a masters degree in a related field which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related masters degree.

(b) Nurse faculty or an assistant administrator in an associate degree prelicensure registered nurse program shall hold a degree from an accredited college or university which shall include:

1. A masters degree within the discipline of [~~with a major in~~] nursing or have completed that portion of a nursing program that would be equivalent to a masters in nursing degree;

2. A baccalaureate degree with a major in nursing or have completed that portion of a state approved program of nursing that would be equivalent to a baccalaureate degree and a masters degree in a related field which includes a minimum of eighteen (18) graduate hours in nursing. The eighteen (18) graduate hours in nursing may also be earned independently of the related masters degree; or

3. A baccalaureate degree with a major in nursing, and the nurse faculty member shall complete within five (5) years of hire a masters degree commensurate with either subparagraph 1 or 2 of this paragraph.

(c) Nurse faculty or an assistant administrator in a practical nurse program shall have a minimum of a baccalaureate degree with a major in nursing from an accredited college or university.

(d) The nurse faculty [~~in all educational programs whose faculty prepares students for licensure as registered nurses~~] shall hold a temporary work permit or a current license or privilege to practice as a registered nurse in the Commonwealth of Kentucky.

(e) [~~(d)~~] The nurse faculty [~~in all educational programs whose faculty prepares students for licensure as registered nurses~~] shall document [~~have experience in the clinical or functional area of responsibility with~~] a minimum of two (2) years full time or equivalent experience as a registered nurse within the immediate past five (5) years and shall maintain expertise appropriate to teaching responsibilities [~~or successful completion of a competency based reentry program acceptable to the board~~].

(f) [~~(e)~~] The nurse faculty [~~in all educational programs whose faculty prepares students for licensure as registered nurses~~] shall document preparation in educational activities in the area of teaching and learning principles for adult education, including curriculum development and implementation. The preparation shall be acquired through planned faculty in-service learning activities, continuing education offerings, or academic courses.

(g) Nurse faculty shall maintain expertise in the clinical or functional area of responsibility.

(h) Nurse faculty hired without prior teaching experience shall have a mentor assigned and an educational development plan implemented.

(i) Nonnurse faculty members who teach nursing courses required within the curriculum shall have appropriate academic and experiential qualifications for the program areas in which they participate. Nonnurse faculty shall be required to collaborate with a nurse faculty member in order to meet the nursing course outcomes.

Section 3. Clinical Preceptors. (1) Clinical preceptors may be used to enhance clinical learning experiences, after a student has received clinical and didactic instruction from the program faculty in all basic areas for the course or specific learning experience.

(2) A clinical preceptor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in Kentucky. In a practical nursing program, a clinical preceptor may hold a current unencumbered license, privilege or temporary work permit to practice as a licensed practical nurse in Kentucky.

(3) A clinical preceptor shall have evidence of clinical competencies related to the area of assigned clinical teaching responsibilities and serve as a role model to the student.

(4) A clinical preceptor shall not be used to replace clinical instructors. Clinical instructors or nurse faculty retain responsibility for student learning and confer with the clinical preceptor and student for monitoring and evaluating learning experiences.

(5) There shall be documentation of orientation to the course, program outcomes, student learning objectives, evaluation methods to be utilized, and documented role expectations of faculty, preceptor, and student. [~~have experience in the application of principles in teaching and learning~~]

~~Section 2. Faculty for Prelicensure Practical Nurse Programs. (1)(a) The faculty shall include a nurse administrator and shall include at least two (2) nurse faculty (one (1) of whom may also serve as nurse administrator). The faculty may include clinical instructors in the major areas of nursing practice. The faculty shall be adequate in number and composition to assess, plan, implement, and evaluate the program and its curriculum in relation to the stated purpose, philosophy, objectives, and number of students and classes admitted annually.~~

~~(b) The nurse administrator, the nurse faculty and the clinical instructor shall be appointed by and be responsible to the governing institution of the programs of nursing.~~

~~(2) The nurse administrator shall have the following qualifications:~~

~~(a) A baccalaureate or higher degree with a major in nursing.~~

~~(b) A minimum of five (5) years of nursing experience within the past ten (10) years with experience in administration.~~

~~(c) Current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.~~

~~(3)(a) Nurse faculty appointed after January 1, 1992 shall have a minimum of a baccalaureate degree with a major in nursing.~~

~~(b) Nurse faculty shall hold a current license, privilege, or temporary work permit to practice as a registered nurse in the Commonwealth of Kentucky.~~

~~(c) Nurse faculty shall have experience in the clinical or functional area of responsibility with a minimum of two (2) years of experience as a registered nurse within the immediate past five (5) years or successful completion of a refresher course approved by the board pursuant to 201 KAR 20:380.~~

~~(d) Nurse faculty shall have experience in the application of principles in teaching and learning.~~]

Section 4. [~~3.~~] Evaluation of Registered Nurse Program and Practical Nurse Program Faculty. (1) Evaluation of faculty records. The program [~~nurse~~] administrator shall submit to the board the qualifications of nurse faculty and clinical instructors upon appointment.

(a) Official academic [college] transcripts or copies verified by the nurse administrator or designee shall be available to the board upon request.

(b) A complete and official record of qualifications and workload for each faculty member shall be on file and available to the board upon request

(c) Faculty appointments shall be reported to the board in writing.

(d) The program administrator shall report a change in faculty composition within thirty (30) days of appointment or vacancy.

(2) Reevaluation of faculty records. The board shall review annually the qualifications of the faculty employed in the program of nursing. [~~If standards are not met, the governing institution shall be notified that a new student class may not be enrolled until standards are met. The program of nursing may also be subject to conditional approval status in accordance with 201 KAR 20.280, Section 2(2).~~]

Section 5. [~~4.~~] Faculty Supervision of Student Clinical Practice. (1) The [~~Effective the maximum~~] ratio of students to a nurse faculty member or clinical instructor is set by 201 KAR 20 260, Section 1(3) [~~in the clinical area shall be ten (10) to one (1)~~].

(2) The clinical instructor shall function under the guidance of the nurse faculty responsible for a given course.

(3) For Registered Nurse educational programs, the educational preparation of the clinical instructor shall at least equal the level of the appointing program.

(4) The clinical instructor shall hold a current unencumbered license, privilege, or temporary work permit to practice as a registered nurse in Kentucky or in the state of the student's clinical site.

(5) A clinical instructor shall have a minimum of two (2) years full time or equivalent experience within the functional area as a registered nurse within the immediate past five (5) years and evidence of clinical competence.

Section 6. Faculty Waiver. (1) All nurse faculty members are expected to meet qualifications as set forth in this administrative regulation. The program administrator may request a time-limited temporary waiver if a program of nursing meets the following criteria:

(a) Full approval status;

(b) Program NCLEX pass rate for first time test takers for the preceding year of a minimum of eighty-five (85) percent;

(c) The program has not requested a waiver for the previous two (2) years; and

(d) Faculty turnover for the past academic year does not exceed thirty (30) percent.

(2) No more than two (2) faculty waivers are permitted at any one time per program.

(3) The waiver shall be requested by the program administrator. The faculty appointment shall not be implemented by the program until the board has approved it.

(4) A waiver shall be limited to one (1) time for any individual [~~Any exception shall be justified to the board.~~]

SUSAN H. DAVIS, President

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: July 10, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2007, at 1 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for faculty for prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for faculty at RN and LPN programs. It sets the educational credentials and experience required for the program administrator and all nurse faculty. It sets standards for the use of clinical preceptors. It includes a procedure for a temporary waiver of standards when needed.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:320. Standards for curriculum of prelicensure nursing [registered nurse] programs.

RELATES TO: KRS 314.011(5), 314.021, 314.041(1)(a), 314.111(1), 314.131(1), (2)

STATUTORY AUTHORITY: KRS 314.111(1), 314.131(1), (2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 314.041(1)(a) requires that an applicant for licensure as a registered or licensed practical nurse complete the basic nursing curriculum in an approved school of nursing. KRS 314.111(1) requires that schools of nursing regardless of delivery models shall meet minimum standards and be approved by the Board of Nursing. KRS 314.131(1) and (2) authorizes the board to promulgate administrative regulations necessary to approve programs of nursing. This administrative regulation establishes the curriculum requirements for prelicensure registered nurse programs.

Section 1. Definitions. (1) "Associate degree program" means a program of nursing organized and administered by a community college, or a four (4) year college or university which awards the graduate an associate degree in nursing upon meeting the requirements of the governing institution.

(2) "Baccalaureate degree program" means a program of nursing organized and administered by a senior college or university which awards the graduate a baccalaureate degree in nursing upon meeting the requirements of the governing institution.

(3) "Masters degree program" means a program leading to a masters degree which is the individual's first professional degree in nursing and is conducted by an educational unit in nursing within the structure of a senior college or university.

(4) "Multiple Entry-Exit program" or "MEEP" means a program which allows a student to challenge the NCLEX-RN or NCLEX-PN examinations when the student has completed sufficient course work in a professional nursing program that meets all requirements for the examination.

(5) "Practical nursing program" means a program of nursing organized and administered by a vocational, technical, or adult education system or an independent school at a postsecondary level which awards the graduate a diploma in practical nursing upon meeting requirements of the program.

(6) "Prelicensure nursing education program" means an educational entity that offers the courses and learning experiences that prepare graduates who are competent to practice nursing safely and who are eligible to take the NCLEX-RN or NCLEX-PN examinations.

(7) "Registered nursing program" means a program of nursing organized and administered by an institution of higher learning which awards a degree upon meeting requirements of the program. A registered nursing program is considered to be any program that culminates in the graduate being eligible for licensure. Examples of registered nurse programs are associate degree programs, baccalaureate degree programs, masters degree programs, and multiple entry-exit programs.

Section 2. General. (1) [~~Pursuant to KRS 314.041(1)(a),~~] An applicant for licensure [~~as a registered nurse~~] shall complete a prelicensure program of nursing [~~an associate degree program or a baccalaureate degree program~~] that meets the requirements of this administrative regulation.

(2) Length.

(a) A registered nursing [~~nurse~~] program shall be a minimum of two (2) academic years which may include prior articulated academic credits.

(b) A practical nursing program shall be a minimum of one (1) academic year.

(3) Philosophy, mission, and outcomes [~~objectives~~].

(a) The philosophy, mission, and outcomes [~~objectives~~] of the program of nursing shall be clearly defined in writing by the nursing faculty and be consistent with those of the governing institution.

(b) The program outcomes [~~objectives~~] shall describe the expected competencies of the graduate.

(c) The program shall conduct an assessment to validate that identified outcomes have been achieved and provide evidence of improvement based on an analysis of those results.

(d) The organizing framework shall serve as a foundation for level of progression, level of outcomes, and course sequencing.

(4) Approval.

(a) A curriculum plan shall be [~~not be implemented unless~~] approved by the board in accordance with this administrative regulation.

(b) The curriculum plan shall enable the student to develop the nursing knowledge, skills, and competencies for the expected entry level and scope of practice.

(c) Theory and clinical experiences shall provide the student with opportunities to acquire and demonstrate the knowledge, skills, and competencies necessary for safe practice.

(5) Curriculum plan.

(a) The development, implementation, evaluation, and revision of the curriculum shall be the responsibility of the nursing faculty including the program administrator with input from students.

(b) The curriculum of the prelicensure nursing education program shall assure the development of evidence based practice for the level and scope of nursing practice. This shall include the skills to identify and apply best practices in nursing care by providing client-centered, culturally competent care and respecting client differences, values, preferences, and expressed needs.

(c) A registered nursing program may determine that a portion of the curriculum fulfills the scope of practice for licensed practical nursing and allow students to exit the program and be made eligible for the NCLEX-PN examination. The registered nursing program shall submit its plan to the board for approval.

(6) [~~Include supporting evidence that students will be able to acquire the nursing skills essential for safe practice upon graduation.~~

~~(5)~~] Organization of the curriculum.

(a) There shall be a written plan, including supporting rationale, and organizing framework, which describes the organization and development of the curriculum.

(b) The curriculum design shall reflect the philosophy, mission, and outcomes [~~objectives~~] of the program.

(c) There shall be a rationale for the amount of time or [~~credit~~

~~allocated to course and clinical practice experience.~~

~~(d)~~] credits allocated to course and clinical practice experience [~~shall be identified~~].

(d) [~~(c)~~] A [~~copy of each~~] course syllabus shall be developed for each nursing course to include outcomes [~~outline, including objectives,~~] planned instruction, learning activities, and method of evaluation. Each course shall be implemented in accordance with the established course syllabi. A copy of each course syllabus shall be on file in the program of nursing office and shall be available to the board upon request.

(e) The curriculum plan shall be logical, sequential, and demonstrate an increase in difficulty and complexity as the student progresses through the program.

(7) [~~shall be on file in the program office.~~

~~(6)~~] Curriculum components.

(a) The curriculum of a registered nursing program or a practical nursing program shall prepare the graduate for licensure and full scope of practice as defined by law, current standards for nursing practice, and expected competencies of graduates at the appropriate educational level [~~shall include:~~

~~1. Areas of biological, physical and psychosocial sciences;~~

~~2. Areas of nursing science and practice; and~~

~~3. An integrated practicum as required by subsection (8) of this section~~].

(b) The curriculum shall include theory and selected clinical practice experiences designed to enable students to provide nursing care to individuals throughout the life span [~~cycle~~].

(c) Clinical practice settings shall be appropriate for the type of nursing program and the program outcomes and enable the student to observe and practice safe nursing care of persons at each stage of the life span. Experiences shall include opportunities to learn and provide care to diverse ethnic and cultural populations [~~objectives~~].

(d) Clinical practice experience shall be supervised by board approved nursing faculty in accordance with 201 KAR 20.310, including the utilization of clinical preceptors.

(e) The curriculum shall have written, measurable program competencies that reflect the role of the graduate.

(f) Students shall have sufficient opportunities in simulated or clinical settings to develop psychomotor skills essential for safe, effective practice.

(8) [~~(7)~~] Curriculum change.

(a) A prelicensure nursing education program that is not accredited by a national nursing accreditating body shall submit a written plan for major curriculum revisions to the board a minimum of four (4) months prior to the planned implementation. A request for curriculum revision shall include the present plan, the proposed change with rationale and expected outcomes. Consultation from the board is advised when curriculum revisions are being considered. Major curriculum revisions include:

1. A change in the philosophy, mission or outcomes which result in a reorganization or re-conceptualization of the entire curriculum;

2. The addition of tracks or alternative programs of study which provide educational mobility; or

3. The initiation of distance learning where a student can obtain fifty percent or more of the credits needed to meet program completion requirements. [~~Any substantive change in the philosophy, objectives, conceptual or organizing framework, or the curriculum plan (including the addition or deletion of major content areas) shall be submitted to the board for approval before implementation, unless the program of nursing is accredited by the National League for Nursing Accrediting Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE).~~]

(b) An accredited program of nursing shall submit to the board a copy of any [~~the~~] curriculum revision submitted to an [~~approved by the~~] accrediting agency within thirty (30) days [~~of the approval~~]. The program of nursing shall submit a copy of all correspondence related to program accreditation from the accrediting agency to the board.

(c) A program of nursing that implements a curriculum change shall provide an evaluation of the outcomes of those changes through the first graduating class following full implementation of the curriculum change. The program of nursing shall also submit the evaluation with its annual report.

(9) [~~(8)~~] Integrated practicum.

(a) The curriculum shall include an integrated practicum. The integrated practicum shall consist of a minimum of 120 clock hours of concentrated clinical experience of direct patient care in a health care facility or health care organization.

(b) The integrated practicum shall be completed within a period not to exceed seven (7) consecutive weeks while the governing institution is in session during the last semester or quarter of a nursing program.

(10) [~~(9)~~] All prelicensure nursing programs shall implement the integrated practicum requirement into their curriculum for students entering the program on or after July 1, 2004.

(11) Distance learning programs.

(a) A program of nursing that delivers didactic instruction by distance learning methods shall insure that the methods of instruction are compatible with the program curriculum and enables a student to meet the goals, competencies, and outcomes of the educational program and the standards set by the board.

(b) A distance learning program shall establish a means for assessing individual student and program outcomes, including minimum student retention, student satisfaction, and faculty satisfaction.

(c) The nurse faculty shall be licensed in the state of origination of a distance learning program.

(d) A distance learning program shall provide students with access to technology, resources, technical support, and the ability to interact with peers and faculty.

SUSAN H. DAVIS, President

APPROVED BY AGENCY. June 14, 2007

FILED WITH LRC: July 10, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2007, at 1 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for curriculum for prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes. By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for curriculum at RN and LPN programs. It sets out what must be included in the curriculum plan, how changes are to be

reported, and what is to be included in distance learning programs.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis. No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

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(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:340. Students in prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS Chapter 314

STATUTORY AUTHORITY: KRS 314.041(1), 314.051(1), 314.111(1)

NECESSITY, FUNCTION, AND CONFORMITY: It is necessary that students be informed of the rules and administrative regulations which govern the prelicensure educational program.

Section 1. Students in Programs of Nursing. (1) The number of students admitted to the program of nursing shall be determined by the number of qualified faculty, adequate educational facilities, resources, and appropriate number of clinical learning experiences for students.

(2) Admission requirements and practices shall be stated and published in the governing institution's publications and shall include an assessment of achievement potential through the use of previous academic records and, if applicable, the use of preadmission examination scores consistent with curriculum demands and scholastic expectations.

(3) Program information communicated by the program of nursing shall be accurate, complete, consistent, and publicly available.

(4) Participation shall be made available for students in the development, implementation, and evaluation of the program. [~~A statement of policy concerning student admission, readmission, progression, dismissal, attendance, and graduation shall be set forth in writing and appear in at least one (1) current official publication of the governing institution.~~]

Section 2. Student Policies. (1) Student policies of the program of nursing shall be congruent with those of the governing institution. Any difference shall be justified by the program of nursing.

(2) Program of nursing student policies, recruitment, and advertising shall be accurate, clear, and consistently applied. [~~Policies and methods for student selection shall be in accord with the philosophy and objectives of the governing institution and the program of nursing.~~

~~(1) There shall be proof of high school completion or its equivalent on file in the governing institution.~~

~~(2) Upon admission, each student shall be advised in writing regarding the requirements for admission to the licensure examination.~~]

(3) Upon admission to the program of nursing, each student shall be advised in electronic or written format [~~writing~~] of policies pertaining to:

(a) Approval status of the program as granted by the board;

(b) Policies on admission, transfer or readmission, advanced or transfer placement, withdrawal, progression, suspension, or dismissal;

(c) Evaluation methods to include the grading system;

(d) Fees and expenses associated with the program of nursing and refund policies;

(e) Availability of counseling resources;

(f) Health requirements and other standards as required for the protection of student health;

(g) Grievance procedures;

(h) Program of study or curriculum plan;

(i) Financial aid information;

(j) Student responsibilities;

(k) Student opportunities to participate in program governance and evaluation; and

(l) Information on meeting eligibility for licensure.

(4) A plan for emergency care during class or clinical time shall be in writing and available to faculty and students. [~~services which state the respective rights and responsibilities of the governing institution and student.~~]

SUSAN H. DAVIS, President
APPROVED BY AGENCY: June 14, 2007
FILED WITH LRC: July 10, 2007 at 10 a.m.
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Contact Person: Nathan Goldman, General Counsel
(1) Provide a brief summary of:
(a) What this administrative regulation does: It sets standards for students at prelicensure RN and LPN programs of nursing.
(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.
(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.
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(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for students at RN and LPN programs. It sets out standards for admission of students and required policies affecting students.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.
(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards.
(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards.
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(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
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(b) On a continuing basis: No additional cost.
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Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.
Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:350. Educational facilities and resources for prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111(1), 314.131(1)
STATUTORY AUTHORITY: KRS 314.131(1) [~~Chapter 314~~]
NECESSITY, FUNCTION, AND CONFORMITY: It is necessary to have standards for programs of nursing to assure the provision of adequate facilities and resources for conduct of the program of nursing.

Section 1. The facilities and resources [~~needed for development of the program of nursing~~] shall be provided by the governing institution to meet the teaching and learning requirements of students and nurse faculty of the program of nursing.

ADMINISTRATIVE REGISTER OF KENTUCKY

LEGISLATIVE RESEARCH COMMISSION
Frankfort, Kentucky

VOLUME 34, NUMBER 2
WEDNESDAY, AUGUST 1, 2007

MEETING NOTICE: ARRS

The **Administrative Regulation Review Subcommittee** is tentatively scheduled to meet August 14, 2007 at 10 a.m. in room 154 Capitol Annex. See tentative agenda on pages 153-155 of this Administrative Register.

Part 2 of 2

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 2007 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE.**

HOW TO CITE: Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 34, Kentucky Register, page 318 (short form: 34 Ky.R. 318).

KENTUCKY ADMINISTRATIVE REGULATIONS are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board, or Agency		Office, Division, or Major Function	Specific Regulation

ADMINISTRATIVE REGISTER OF KENTUCKY
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POSTMASTER: Send address changes to Administrative Register of Kentucky, 700 Capitol Avenue, Room 64, State Capitol, Frankfort, Kentucky 40601.

Section 2. Physical Facilities. (1) The facilities shall be designed to meet the outcomes [objectives] of the program of nursing and to foster administrative and instructional activities.

(2) Space allocated for the program shall be based on the number of students [size of the student group] and teaching and learning methods.

(3) The physical facilities shall include:

(a) Classrooms, clinical skills [lecture-demonstration room,] laboratory, and conference rooms adequate in size for number of students essential to fulfill program outcomes.

(b) Adequately equipped office space to fulfill the essential functions [Offices equipped] for administrative personnel, faculty, [and secretarial] and clerical staff.

(c) Storage space for equipment and instructional materials.

(d) A private office for the program administrator.

(e) Space available for use in private counseling with students.

Section 3. Library and Learning Resources. (1) Instructional material shall be readily available for use in teaching and learning [and study by faculty and students].

(2) The program, through ownership or formal arrangements, shall provide student and nurse faculty with access to an adequate library collection consistent with the program offered. The library collection shall be current and include sufficient titles, references, periodicals, and other material to achieve the outcomes of the curriculum.

(3) The program shall ensure that students and nurse faculty have access to instruction on the use of the library resources.

(4) The use of technology shall enhance student learning and shall be appropriate for meeting the outcomes of the program. Students shall have access to and instruction in the use of the technology.

(5) There shall be sufficient technical and clerical support services available to meet the needs of the nurse faculty and the students.

(6) The collection of library resources for the program of nursing shall be allocated on the same basis as the collections for other departments in the governing institution.

(7) Distance learners shall have comparable access to library resources as available to on-campus students.

(8) A system of acquisition and deletion shall exist that ensures currency and appropriateness of library resources. [Library holdings should include current references on nursing and related subjects.]

Section 4. Clinical Facilities. (1) The program shall arrange for the clinical practice experience of students in the clinical facilities.

(2) Clinical facilities shall show evidence of [the following:

(a)] approval by the appropriate accreditation, evaluation or licensure bodies, when applicable. [for example, Joint Commission on Accreditation of Hospitals, Commission on Accreditation of Rehabilitation Facilities, and Kentucky Department of Education.

(b) Compliance with applicable laws and rules of regulatory agencies.

(c) Adequacy of the agencies and services in number and kind utilized for clinical experiences to meet curricular objectives.]

SUSAN H. DAVIS, President

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: July 10, 2007 at 10 a.m.

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(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It does not.

(9) TIERING: Is tiering applied? Tiering was not applied as the

changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-).

Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:360. Evaluation of prelicensure registered nurse and practical nurse programs.

RELATES TO: KRS 314.111(1), (2), (3), 314.131(1)

STATUTORY AUTHORITY: KRS Chapter 314

NECESSITY, FUNCTION, AND CONFORMITY: Evaluative standards need to be established to assure that the programs of nursing provide the necessary instruction and services to prepare graduates for licensure eligibility as registered nurses or as practical nurses.

Section 1. Approval Status and Withdrawal of Approval. (1) Approval status is based upon each program of nursing's performance and demonstrated compliance with board requirements.

(a) Developmental approval is the designation granted to a proposed program of nursing to continue development of plans for program implementation.

(b) Initial approval is the designation granted to a new program of nursing upon admission of the first class, provided the date of enrollment is within eighteen (18) months of board approval of the proposal. During the period of initial approval, reports documenting implementation of the proposal shall be submitted on a quarterly basis.

(c) Full approval is the designation granted to a program of nursing that has implemented the proposal and that continues to meet standards.

(d) Qualified approval is the designation granted to a program of nursing that has partially met the requirements of 201 KAR 20:260 through 20:360, with areas of deficiencies delineated.

1. Following the decision of the board to place a program of nursing on qualified approval, the program administrator shall be notified of the areas of deficiency and a timeframe shall be set by the board for corrective actions to be implemented.

2. The program administrator shall, within thirty (30) days of the notice of the deficiencies, file a plan of compliance detailing corrective action for each of the identified deficiencies. If the plan of compliance is not received within thirty (30) days, the program shall pay a fee of $100 per day for each day the plan is delayed.

3. The program administrator may, within thirty (30) days of the notice of the deficiencies, request to appear before the board to contest the board's determination of deficiencies.

4. If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

5. If the plan of compliance is not completed satisfactorily within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the approval status of the program of nursing shall be adjusted to conditional and a fee of $5000 shall be imposed.

(e) Conditional approval is the designation granted to a program of nursing when one (1) or more standards have not been met.

1. Following the decision of the board to place a program of nursing on conditional status, the program administrator shall be notified of the areas of deficiency and the time frame allowed for corrective action to be implemented.

2. The program administrator shall, within thirty (30) days of the notice of deficiencies, file a plan to correct each of the deficiencies. If the plan of compliance is not received within thirty (30) days, the program shall pay a fee of $100 per day for each day the plan is delayed.

3. The program administrator may, within thirty (30) days of the notice of the deficiencies, request to appear before the board to contest the board's determination of deficiencies.

4. If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

5. If the plan of compliance is not completed satisfactorily within the time frame set by the board and if the program of nursing has not been granted additional time for completion, the approval status of the program of nursing shall be adjusted to probational and a fee of $5000 shall be imposed.

(f) Probational approval is the designation granted to a program of nursing when one or more standards have continued to be unmet.

1. Following the decision of the board to place a program of nursing on probational status, the program administrator shall be notified of the continued areas of deficiency. No new students may be admitted until the time the program of nursing comes into compliance. This period of time shall not exceed one academic year.

2. The program administrator shall, within thirty (30) days of the notice of the deficiencies, file a plan to correct each of the identified deficiencies.

3. The program administrator may, within thirty (30) days, of the notice of the deficiencies, submit a request to appear before the board to contest the board's determination of deficiencies.

4. If the board's determination of deficiencies has not been contested or if the deficiencies are upheld after a request to contest them, the board may conduct periodic evaluations of the program of nursing during the time of correction to determine that deficiencies have been corrected.

(g) If the program of nursing has not corrected the deficiencies within one academic year of being placed on probational status, a hearing pursuant to KRS Chapter 13B shall be conducted to determine whether to withdraw approval of the program of nursing.

(h) If the board decides to withdraw approval of a program of nursing, upon the effective date of the decision the program of nursing shall immediately cease operation and be removed from the official approved status listing. A program of nursing that has been ordered to cease operation shall assist currently enrolled students to transfer to an approved program of nursing.

Section 2. Reports and Examination Pass Rates. (1) A program of nursing that prepares graduates for licensure shall meet all standards in order to retain full approval. Approval status shall be

determined annually by the board on the basis of the program's annual report, NCLEX examination pass rates for first time test takers, and other pertinent data.

(2) A program of nursing shall submit an annual report regarding its compliance with administrative regulations 201 KAR 20:260 through 20:360. A secondary or distance learning site shall be treated independently for purposes of compliance with the minimum standards set by the board.

(3) To verify continued compliance with these administrative regulations, the program administrator shall submit progress reports or periodic supplemental reports, completed questionnaires, surveys, and other documents as requested by the board.

(4) A program of nursing shall maintain at least an eighty-five (85) percent annual pass rate for graduates taking the NCLEX-RN or NCLEX-PN for the first time. Pass rates shall be published on a calendar year basis for those graduates who have tested within twelve (12) months of graduation.

(5) A program of nursing and secondary or distance learning site shall be evaluated individually concerning licensure examination results.

(6) If a program of nursing's pass rate for first time test takers is less than eighty-five (85) percent for a calendar year, the program administrator shall submit a self study report that evaluates factors that contributed to the graduate's performance on the NCLEX examination and a description of the corrective measures to be implemented.

Section 3. Factors That May Jeopardize Program Approval Status. Approval status may change for any of the following reasons:

(1) Deficiencies in compliance with 201 KAR 20:260 through 20:360;

(2) Noncompliance with the governing institution or program of nursing's stated philosophy, mission, program design, objectives/outcomes, or policies;

(3) Continual failure to submit records or reports to the board within the designated time frame;

(4) Failure to provide sufficient clinical learning opportunities for students to achieve stated objectives/outcomes;

(5) Failure to comply with requirements of the board or to respond to recommendations of the board within the specified time;

(6) Failure to maintain an eighty-five (85) percent pass rate on the licensure examination for first time test takers;

(7) Other activities or situations that demonstrate to the board that a program of nursing is not meeting requirements or these administrative regulations; or

(8) Withdrawal of accreditation by a national nursing accrediting body recognized by the United States Department of Education.

Section 4. Program Evaluation. (1) The faculty shall engage in a research based planning and evaluation process that incorporates a systematic review of the program of nursing that results in continuing improvement. This process shall result in an evaluation plan that is submitted to the board.

(2) The evaluation plan shall include evidence that data collection is evidence-based, on-going, and reflects the collection, aggregation analysis, and trending of data.

(3) The evaluation plan shall provide evidence that the outcomes of the assessment process is used to improve the quality and strength of the program.

(4) The evaluation plan shall include specific responsibilities for data collection methods, individuals or groups responsible, frequency of data collection, indicators of achievement, findings, and outcomes for evaluating the following aspects of the program:

(a) Organization and administration of the program of nursing;

(b) Curriculum;

(c) Resources, facilities, and services;

(d) Teaching and learning methods including distance education;

(e) Faculty performance;

(f) Student achievement of program outcomes;

(g) Graduation rates;

(h) Licensure examination pass rates;

(i) Employment rates of graduates; and

(j) Clinical resources.

(5) If a program of nursing utilizes distance education for didactic instruction, it shall evaluate and assess the educational effectiveness of its distance education program to insure that the distance education program is substantially comparable to a campus based program.

Section 5. Voluntary Closure of a Program. (1) A governing institution seeking to close a program of nursing shall submit written notification to the board at least six (6) months prior to the planned closing date.

(2) A governing institution may choose one (1) of the following procedures for closing a program of nursing.

(a) The governing institution shall continue the program of nursing until the last class enrolled has graduated.

1. The program shall continue to meet the standards for approval until all official students who meet requirements have graduated or transferred.

2. The official closing of the program is the date on the degree, certificate, or diploma of the last graduate.

3. The governing institution shall notify the board in writing of the official closing date.

(b) The governing institution shall close the program after the transfer of students to other approved programs.

1. The program shall continue to meet the standards for approval until all students have transferred.

2. The names of students who have transferred to approved programs and the date of the last student transfer shall be submitted to the board by the governing institution.

3. The date of the last student transfer shall be the official closing date of the program.

(3) Custody of records.

(a) The governing institution that continues to operate shall retain responsibility for the records of the students and graduates. The board shall be advised of the arrangement made to safeguard the records.

(b) The governing institution that ceases to exist shall transfer the academic transcript of each student and graduate to the board for safekeeping.

1. The transcript of the student or graduate shall identify the date on which the program closed.

2. The board shall be consulted about the disposition of all other program records.

Section 6. Change in Ownership or Organization of the Governing Institution. (1) The governing institution shall notify the board in writing of any intent to transfer administrative authority or ownership and shall provide the following information:

(a) Evidence of state authorization to operate the institution under the new ownership or control;

(b) A description of the immediate and long-range plans by the institution under the new ownership to the program of nursing; and

(c) A list of personnel changes brought about by the change of ownership or control.

(2) The board shall conduct a site visit to insure adherence by the program of nursing to administrative regulations.

(3) Following this site visit, approval of the program of nursing shall continue under the new ownership provided the approval standards continue to be met. [~~Evaluation for Full Approval: Registered Nurse and Practical Nurse Programs. (1) Retaining full approval. A program of nursing that prepares graduates for licensure shall meet standards in order to retain full approval.~~

~~(2) If the program fails to submit to the board the annual list of faculty by the date specified by the board, the nurse administrator of the program shall appear before the board at a scheduled hearing to show cause that approval of the program of nursing be continued.~~

~~(3) If the nurse faculty do not meet the minimum qualifications as set forth in 201 KAR 20:310, faculty for prelicensure registered nurse and practical nurse programs, the nurse administrator of the program shall appear before the board at a scheduled hearing to show cause that approval of the program of nursing be continued.~~

~~(4) If for one (1) fiscal year the graduates of a program of nurs-~~

~~ing achieve a pass-rate less than eighty-five (85) percent on the licensure examination:~~

~~(a) A letter of concern shall be issued.~~

~~(b) The nurse administrator shall be requested to submit an analysis of the cause(s) of the high failure rate on the licensure examination and plans to correct the deficiencies for the future.~~

~~(5) If for two (2) consecutive fiscal years the graduates of a program of nursing achieve a pass-rate less than eighty-five (85) percent on the licensure examination:~~

~~(a) A letter of warning shall be issued.~~

~~(b) The nurse administrator shall appear before the board and give a report of the implementation of the plans submitted to the board the previous year and to present any further analysis and plans to correct the deficiencies as defined.~~

~~(c) The program of nursing shall be surveyed by a representative of the board.~~

~~(6) If for three (3) consecutive fiscal years the graduates of a program of nursing achieve a pass-rate less than eighty-five (85) percent on the licensure examination, the nurse administrator and the head of the governing institution or designee shall appear before the board to show cause that approval of the program be continued.~~

~~(7) Evaluation. The faculty shall perform systematic and periodic evaluation of the total program including:~~

~~(a) Organization and administration of the program of nursing.~~

~~(b) Curriculum.~~

~~(c) Resources, facilities, and services.~~

~~(d) Teaching and learning methods.~~

~~(e) Faculty.~~

~~(f) Students.~~

~~(g) Graduates.~~

~~(h) Licensure examination pass-rates.~~

~~Section 2. Board Evaluation. (1) The nurse administrator shall inform the board of any changes in the governing institution or program of nursing.~~

~~(2) A yearly progress report and evaluation shall be made by the nurse administrator to the board during the period of initial approval of a program of nursing.~~

~~Section 3. Reports to the Board. (1) Annual.~~

~~(a) A report is required from each program of nursing on forms supplied by the board.~~

~~(b) A faculty summary shall be submitted on forms supplied by the board.~~

~~(2) Faculty.~~

~~(a) Faculty appointments shall be reported on forms supplied by the board.~~

~~(b) The nurse administrator shall report a change in faculty composition within thirty (30) days of such change.~~

~~(3) The board shall require such additional reports from programs of nursing as may be deemed necessary to determine continued eligibility for approval.]~~

SUSAN H. DAVIS, President

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: July 10, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2007, at 1 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938,
email nathan goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets standards for the evaluation of prelicensure RN and LPN programs of nursing.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting standards.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting standards.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments update and modernize the standards required for evaluation of RN and LPN programs. It sets out the type of approval statuses and what happens when a program does not meet standards.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation has not been comprehensively updated in over 20 years. Many changes in the structure of prelicensure programs of nursing have occurred during that time, necessitating this amendment.

(c) How the amendment conforms to the content of the authorizing statutes: By setting appropriate standards.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the standards set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost, if any, cannot be estimated and will vary by program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Prelicensure programs of nursing will be held to more appropriate standards and be more successful at educating nurses.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It sets two new fees: a fee for failure to meet the plan of compliance and a fee for failure to file a plan of compliance.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

GENERAL GOVERNMENT CABINET
Board of Nursing
(Amendment)

201 KAR 20:450. Alternative program.

RELATES TO: KRS 314.085, 314.091, 314.171, 314 470
STATUTORY AUTHORITY: KRS 314.131(1), (2), 314.171(3)
NECESSITY, FUNCTION AND CONFORMITY: KRS 314.171 authorizes the board to establish an impaired nurses committee to promote early identification, intervention, treatment, and rehabilitation of nurses who may be impaired by reason of illness, alcohol or drug abuse, or as a result of any physical or mental condition. This administrative regulation provides procedures for the implementation of an alternative program.

Section 1. Definitions. (1) "Approved treatment provider" means an alcohol or drug treatment provider that meets the standards as set out in Section 7 of this administrative regulation.

(2) "Board" means the Board of Nursing

(3) "Chemically-dependent individual" means a person [~~nurse or applicant for a credential issued by the board~~] whose ability to practice nursing according to acceptable and prevailing standards of care is or may be impaired by reason of alcohol or drug abuse.

(4) "Program" means the Kentucky Alternative [~~Alternate~~] Recovery Effort for Nurses which is the alternative program operated by the board for nurses [~~or applicants for a credential issued by the board~~].

Section 2. Admission and Denial to the Program. (1) In order to gain admission to the program, an individual shall:

(a) Be an advanced registered nurse practitioner, a registered nurse or a licensed practical nurse licensed in the Commonwealth of Kentucky, a holder of a multistate licensure privilege pursuant to KRS 314.470, or an applicant for a credential issued by the board,

(b) Request in writing participation in the program [~~regardless of whether referred by the board, self, or another person~~];

(c) [~~Be licensed as an advanced registered nurse practitioner, a registered nurse or licensed practical nurse currently enrolled in a state approved alternative program, if requesting licensure by endorsement from another state;~~

~~(d)~~] Admit in writing to being a chemically-dependent individual;

(d) [~~(e)~~] Agree in writing to the terms set forth in the program agreement;

(e) [~~(f)~~] Obtain a current chemical dependency assessment, which may include a complete physical and psychosocial evaluation performed by a licensed or certified medical, mental health or psychological specialist in the field of drug, alcohol, or other chemical dependency;

(f) [~~(g)~~] Provide any evaluation and treatment information, disclosure authorizations, and releases of liability as may be requested by the program staff;

(g) [~~(h)~~] Agree to abide by the programs staff's determination regarding employment as a nurse pending admission [~~not be employed in any capacity in a patient care setting or one which requires licensure until approved to do so by the program staff~~]; and

(h) [~~(i)~~] Have attended or be enrolled in an approved treatment provider program.

(2) Admission to the program shall be denied if the applicant:

(a) Does not meet the eligibility requirements for admission as set by subsection (1) of this section; or

(b) Is not eligible for licensure in Kentucky or if the board does not grant authorization to practice under KRS 314.470 Article V(f) or 201 KAR 20:500, Section 3(2).

(3) Admission to the program may be denied if the applicant:

(a) Diverted scheduled substances for other than self-administration;

(b) Will not substantially benefit from participation in the program;

(c) Has a criminal conviction related to the sale or distribution of scheduled substances or legend prescription drugs; or

(d) Has been terminated from alternative program participation in Kentucky or any other state.

(4) In the case of an applicant for a credential issued by the board, admission to the program shall be conditioned upon obtaining licensure in Kentucky. Failure to obtain licensure shall result in denial of admission to the program.

Section 3. Requirements for Participation in the Program. (1) A participant shall:

(a) Enter into a program agreement; and

(b) Comply with all of the terms and conditions of the program agreement for the time period specified in the agreement.

(2) The program agreement shall be updated and modified as needed to address the participant's progress in recovery and may include any of the following:

(a) A requirement that the participant undergo and successfully complete chemical dependency treatment by an approved treatment provider;

(b) A requirement that the participant agree not to practice in any capacity in a patient care setting or one which requires licensure until approved to do so by the program;

(c) A requirement that the participant undergo and successfully complete the continuing care program recommended by the approved treatment provider and designated in the program agreement. The continuing care program may include individual or group counseling or psychotherapy;

(d) A requirement that the participant remain free of alcohol, mood-altering substances including herbal preparations, over-the-counter medications containing alcohol or mood-altering substances, and any other medication except for substances prescribed by a practitioner authorized by law to prescribe for a specific medical condition;

(e) A requirement that the participant inform all treating health care practitioners of the participant's chemical dependency and recovery status prior to receiving a prescription for any medication, mood-altering substance, or herbal preparation;

(f) A requirement, when a participant must take any substance prescribed or recommended by a practitioner, that the participant provide the program written documentation from the practitioner that the use of the substance does not impair the participant's ability to practice nursing in a safe and effective manner and will not interfere with the participant's recovery program provided the substance is used in accordance with the prescription or recommendation;

(g) A requirement that if the participant is prescribed, recommended, or dispensed any medication by a practitioner, the participant shall cause the practitioner to report the medication to [~~complete a medication report form provided by~~] the program. The [~~medication~~] report [~~form~~] shall include the diagnosis, the name of the medication, the quantity prescribed, any refills or any other information about the medication requested by the program staff [~~and a copy of any prescription from any physician~~], and shall be submitted to the program within the time specified in the program agreement. Consultation with a physician addictionologist may be required by the program and the participant shall agree to abide by any determination made by the physician addictionologist;

(h) A requirement that the participant cause all treatment providers and counselors to provide any reports as may be required by the program at the intervals specified in the program agreement;

(i) A requirement that the participant submit to random alcohol and drug testing when requested by the program, and that the participant comply with all requirements of the program concerning random alcohol and drug testing;

(j) A requirement that the participant attend health professionals' support group, twelve (12) step group meetings, or other group meetings as specified by the program agreement, and that the participant verify attendance at these meetings by signature of a group or meeting representative and submit the signatures to the program;

(k) A requirement that the participant comply with the employment and nursing practice restrictions specified by the program agreement;

(l) A requirement that the participant sign a waiver which would allow the program to communicate with the participant's treatment providers, counselors, employers, work site monitors, law enforcement officials and health professionals' support group facilitators, if applicable;

(m) A requirement that the participant be responsible for paying the costs of the physical and psychosocial assessment, chemical dependency treatment, and random alcohol and drug testing, or any other costs incurred in complying with the program agreement;

(n) A requirement that the participant submit a written personal report to the program at the intervals specified by the program agreement;

(o) A requirement that the participant meet in person with a program representative at the intervals specified by the program agreement;

(p) A requirement that the participant shall not work as a nurse in another Nurse Licensure Compact state without the permission of this state and the other state; and

(q) A requirement that the participant comply with all other terms and conditions specified in the program agreement which the program staff determines are necessary to ensure that the participant is able to practice nursing in accordance with acceptable and prevailing standards of safe nursing care.

Section 4. Successful Completion of the Program. (1) A participant successfully completes the program when the participant fully complies with all of the terms of the program agreement for the period as specified in the agreement.

(2) When a participant successfully completes the program, the program shall notify the participant of the successful completion in writing. Once the participant receives this written notification of successful completion of the program, the participant shall no longer be required to comply with the program agreement.

(3) A participant who successfully completes the program shall not be reported to the National Council of State Boards of Nursing's disciplinary data bank.

Section 5. Causes for Termination from the Program. A participant may be terminated from the program for the following causes:

(1) Noncompliance with any aspect of the program agreement;

(2) Receipt of information by the board which, after investigation, results in disciplinary action by the board other than a reprimand; or

(3) Being unable to practice according to acceptable and prevailing standards of safe nursing care.

Section 6. Resignation From the Program. (1) A participant may resign from the program.

(2) Upon resignation, the participant shall sign an agreed order in conformity to 201 KAR 20:161, Section 2(4) voluntarily surrendering the nursing license.

Section 7. Standards for Approved Treatment Providers. In order to be an approved treatment provider, the treatment provider shall:

(1) Be:

(a) Accredited by the Joint Commission for the Accreditation of Healthcare Organizations or be state-certified and shall have operated as a chemical dependency treatment program for a minimum of one (1) year; or

(b) A licensed or certified specialist in the field of chemical dependency treatment as outlined in 201 KAR 20:163, Section 2(2);

(2) Provide inpatient or outpatient care;

(3) Be based on a twelve (12) step program of Alcoholics Anonymous/Narcotics Anonymous or equivalent support group;

(4) Provide development of an individualized treatment and aftercare program to meet the specific needs of the participant and make recommendations regarding an ongoing rehabilitation plan;

(5) Be based on an evaluation that meets the standards of 201 KAR 20:163, Section 3 [~~by a multidisciplinary team, which includes a psychiatrist, addictionologist, licensed counseling staff, and a core of referral specialists~~];

(6) [~~Provide adequate detoxification services, including medical support and motivational support with no use of mood altering drugs past detoxification period unless prescribed by a practitioner consistent with Section 3 of this administrative regulation;~~

~~(7)~~] Provide clearly-stated costs and fees for services, and offer fee schedules and flexibility in payment plans to accommodate participants who are underinsured or experiencing financial difficulties;

(7) [~~(8)~~] Demonstrate willingness to provide information to the alternative program regarding the status of the participant after appropriate consents to release information are obtained;

(8) [~~(9)~~] Work closely with the alternative program staff to assure proper implementation and administration of policies and procedures related to the program;

(9) [~~(10)~~] Maintain timely and accurate communication with program staff, including assessments, diagnosis, prognosis, discharge summary and follow-up recommendations as well as reports on significant events which occur in treatment that are related to impairment and the ability to practice safely;

(10) [~~(11)~~] Provide [~~monthly~~] written reports of progress at intervals as requested by program staff.

Section 8. An individual who is admitted to the program but does not hold a Kentucky nursing license shall pay a participation fee of fifty (50) dollars per year. [~~Incorporation by Reference. (1) "Medication Report Form", 9/00, is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

SUSAN H. DAVIS, President

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: July 10, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2007, at 1 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is

made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It sets admission requirements and procedures for the Board's alternative to discipline program.

(b) The necessity of this administrative regulation: The Board is required by statute to promulgate this administrative regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By setting requirements and procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By setting requirements and procedures.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments make several changes required by the adoption of the Nurse Licensure Compact. Also, reference is made to a new regulation setting standards for chemical dependency evaluators. Several procedures have been updated.

(b) The necessity of the amendment to this administrative regulation: The Nurse Licensure Compact went into effect June 1, 2007. The administrative regulation on evaluations was recently promulgated as well.

(c) How the amendment conforms to the content of the authorizing statutes By setting appropriate requirements and procedures.

(d) How the amendment will assist in the effective administration of the statutes: By setting appropriate requirements and procedures.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Participants in the alternative program. The number varies.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: They will have to meet the new requirements and procedures set by this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is generally no additional cost. If the participant is a resident of another state, there will be a fee of $50 to participate.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will be participating in the alternative program with updated procedures.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees It sets a new fee for participants who are not residents of Kentucky, but may be eligible to practice here based on the Nurse Licensure Compact.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

COMMERCE CABINET
Department of Tourism
(Amendment)

300 KAR 1:010. Procedure for Regional Marketing and Matching Funds Program.

RELATES TO: KRS 148.522, 148.525

STATUTORY AUTHORITY: KRS 148.525(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.525(2) provides that the Division of Tourism Services [~~Marketing and Advertising Services~~] shall be responsible for the state matching fund tourism advertising program. KRS 148.525(3) authorizes the Commissioner of the Department of Tourism [~~Travel Development~~] to promulgate administrative regulations to promote, develop and support the tourism industry in Kentucky. [~~in accordance with the provisions of KRS Chapter 13A in order to carry out the provisions of KRS 148.525~~] This administrative regulation establishes uniform and consistent administration of the application, participation, and reimbursement requirements of the Regional Marketing and Matching Funds Program.

Section 1. Definitions. (1) "Allowable local promotional project" and "allowable regional promotional project" mean a promotional project that is not a state agency, federal agency, or nonprofit organization receiving funds from the Department of Tourism for the purpose of sponsorship or advertising, or state-wide project that:

(a) Meets eligibility requirements established by this administrative regulation; and

(b) Is or will be completed and documented in a matching funds program cycle.

(2) "Local promotional project" means a project that promotes a specific local tourism event, attraction, or geographic area to markets outside the local area.

(3) "Matching funds program cycle" means the period of time

between July [May] 1 of a calendar year and June [April] 30 of the succeeding calendar year.

(4) "Regional promotional project" means a project that promotes tourism opportunities throughout one (1) of the nine (9) [a] tourism regions as designated by the Department of Tourism [region] to markets outside the tourism region.

(5) "Tourism Region" means one (1) of nine (9) geographic areas in Kentucky with similar tourism characteristics, traffic patterns and markets designated by the Department of Tourism as a Tourism Region.

Section 2. Subject to the availability of funds, the regional marketing and matching funds program shall provide financial and marketing assistance to promotional projects of tourism regions and local nonprofit organizations.

Section 3. Tourism Regions. There is established nine (9) tourism regions, as follows:

(1) Tourism Region 1, Western Lakes and Rivers, shall consist of the following counties:

(a) Ballard;
(b) Caldwell;
(c) Calloway;
(d) Carlisle;
(e) Christian;
(f) Crittenden;
(g) Fulton;
(h) Graves;
(i) Hickman;
(j) Livingston;
(k) Lyon;
(l) Marshall,
(m) McCracken;
(n) Todd, and
(o) Trigg.

(2) Tourism Region 2, Green River, shall consist of the following counties:

(a) Daviess;
(b) Hancock;
(c) Henderson;
(d) Hopkins;
(e) McLean,
(f) Muhlenberg;
(g) Ohio;
(h) Union; and
(i) Webster.

(3) Tourism Region 3, Cave, shall consist of the following counties:

(a) Allen;
(b) Barren;
(c) Butler;
(d) Edmonson;
(e) Hart,
(f) Logan;
(g) Metcalfe;
(h) Monroe;
(i) Simpson; and
(j) Warren.

(4) Tourism Region 4, Louisville-Lincoln, shall consist of the following counties:

(a) Breckinridge;
(b) Bullitt;
(c) Grayson,
(d) Hardin;
(e) Henry;
(f) Jefferson;
(g) Larue,
(h) Marion;
(i) Meade;
(j) Nelson;
(k) Oldham;
(l) Shelby;
(m) Spencer;
(n) Trimble; and
(o) Washington.

(5) Tourism Region 5, Southern Kentucky Lakes and Rivers, shall consist of the following counties:

(a) Adair;
(b) Casey;
(c) Clinton;
(d) Cumberland;
(e) Green;
(f) McCreary;
(g) Pulaski;
(h) Russell,
(i) Taylor; and
(j) Wayne.

(6) Tourism Region 6, Northern Kentucky, shall consist of the following counties:

(a) Boone;
(b) Bracken;
(c) Campbell;
(d) Carroll;
(e) Fleming;
(f) Gallatin;
(g) Grant;
(h) Kenton;
(i) Lewis;
(j) Mason;
(k) Owen,
(l) Pendleton; and
(m) Robertson.

(7) Tourism Region 7, Bluegrass, shall consist of the following counties:

(a) Anderson;
(b) Bourbon;
(c) Boyle;
(d) Clark;
(e) Fayette;
(f) Franklin;
(g) Garrard;
(h) Harrison;
(i) Jessamine,
(j) Lincoln;
(k) Madison;
(l) Mercer;
(m) Nicholas;
(n) Scott, and
(o) Woodford.

(8) Tourism Region 8, Eastern Highlands-North, shall consist of the following counties:

(a) Bath;
(b) Boyd,
(c) Carter;
(d) Elliott,
(e) Floyd;
(f) Greenup;
(g) Johnson;
(h) Lawrence;
(i) Magoffin;
(j) Martin,
(k) Menifee;
(l) Montgomery;
(m) Morgan;
(n) Pike; and
(o) Rowan.

(9) Tourism Region 9, Eastern Highlands-South, shall consist of the following counties:

(a) Bell;
(b) Breathitt;
(c) Clay;
(d) Estill;
(e) Harlan;
(f) Jackson;
(g) Knott,
(h) Knox;
(i) Laurel,
(j) Lee;

(k) Leslie,
(l) Letcher;
(m) Owsley;
(n) Perry;
(o) Powell;
(p) Rockcastle;
(q) Whitley; and
(r) Wolfe.

Section 4 Tourism Region Committees. (1) To qualify for state tourism matching funds, a tourism region shall establish a tourism region committee.

(2)(a) Each tourist and convention commission established pursuant to KRS 91A.350 in a tourism region shall appoint a person to serve on the tourism region committee established for its tourism region.

(b) If a tourism and convention commission has not been established pursuant to KRS 91A.350 by the local governing bodies of a county, or cities within a county, in a tourism region, the county judge/executive of each county shall appoint a person to serve on the tourism region committee established for the county's tourism region.

(3) A member of the tourism region committee:

(a) Shall serve a two (2) year term; and

(b) May be reappointed for successive two (2) year terms.

(4) A tourism region committee shall be incorporated[: ~~(a) Incorporated~~] as a nonprofit, nonstock corporation, pursuant to KRS Chapter 273[; ~~and~~

~~(b) Established as a tax-exempt entity, pursuant to Section 501(c)(6) of the Internal Revenue Code of 1976, as amended~~].

(5) A tourism region committee shall:

(a) Elect a chairperson, vice chairperson, secretary, and treasurer;

(b) Establish bylaws that shall include:

1. Purpose, mission, and limitations of committee;
2. Composition and duties of the board of directors and officers;
3. Procedures for election, removal of directors and officers, and filling of vacancies;
4. When meetings shall be held;
5. Quorum and voting requirements;
6. Financial and contractual procedures,
7. Preparation of annual budget and financial report; and
8. Procedure for amendment of bylaws.

Section 5. Types of Promotional Projects. (1) The types of local or tourism region promotional projects eligible for funding shall be.

(a) Tourism publications, CDs, DVDs and videos;
(b) Media advertisements and press kits;
(c) Billboards and signage;
(d) Brochure distribution services;
(e) Postage and freight expenses;
(f) Consumer travel show expenses; [~~or~~]
(g) Group tour marketplace expenses,[-]
(h) Meeting, convention and sports marketing trade show and exposition expenses,
(i) Familiarize trips and site visits;
(j) Sponsorship of tourism trade show and events;
(k) Bid fees to assist in bringing events to Kentucky, and
(l) Internet hosting, design and maintenance expenses.

(2)(a) Promotional projects shall meet the requirements of, or be the type specified by Section 6 of this administrative regulation.

(b) Brochures, videos, CDs, DVDs, tourism region media advertisements and press kits shall not be eligible for reimbursement unless they have been reviewed and approved by the state matching funds program manager prior to submission of a "Reimbursement Request" form for expenditures relating to these items.

Section 6. Requirements for and Types of Promotional Projects; Allowable Costs and Bid Requirements. (1) Tourism publications, [~~and~~] videos, CDs, and DVDs and meeting, convention and sports marketing tools.

(a) Travel related brochures, CDs, DVDs and videos that highlight the attractions, facilities, meeting and convention capabilities, sporting venues, and special events of the tourism region or local area and would encourage travelers to stop and visit.

1. Tourism region and local area visitor's guides;
2. General festival brochures;
3. Group tour publications, [~~and~~]
4. Brochures, [~~and~~] videos, CDs, and DVDs promoting tourist attractions that are open to the public for regular hours; and[~~,~~]
5. Meeting, convention and sports events opportunities.

(b) Costs that exceed the advertising sales shall be eligible for brochures and other publications. The actual cost of advertising sales shall not be eligible. [~~Except as provided by paragraph (k) of this subsection, brochures, other publications, and videos shall not be eligible for state matching funds if they contain advertising sales~~.]

(c) Brochures, other publications, and videos shall include the following information, as applicable:

1. A description of points of interest, recreational opportunities and listing of services, including food, lodging, and camping facilities;
2. Landmarks that relate to the history or tradition of the area, or of architectural interest, such as buildings listed on the state or national register;
3. Attractions open to the public, such as theaters and museums, including the time and date when they are open to the public, the admission fee if any, location, mailing address, [~~and~~] telephone number or web address for additional information if available;
4. Information relating to recreational activities and attractions, such as fishing, water sports, and hiking, and required fees;
5. A list of tourism region or local area events that are tourism-related;
6. The telephone number and website of the state travel information office; and
7. Current maps of the tourism region, with major highways and access routes into the area clearly marked, and a chart listing mileage from major cities outside the immediate local area or tourism region;

(d) If possible, the title of a brochure shall be placed at the top of the publication for placement in a brochure rack.

(e) The text of a brochure shall be informative, interesting, free of typographical or other errors.

(f) A brochure shall be professionally typeset.

(g) If feasible, to save costs, brochures shall:

1. Consist of the lightest possible paper weight and cover stock, and the least number of pages possible;
2. Be manufactured from recycled paper; and
3. Be designed as self-mailers.

(h) The front or back cover of a brochure shall include the Kentucky state official tourism advertising theme, which may be obtained from the state matching funds program manager.

(i) A tag line stating "Printed in cooperation with the Kentucky Department of Tourism[~~Travel Development~~]" shall be included in a brochure.

(j) In addition to the requirements established by this subsection, a tourism region brochure shall also comply with the requirements established by this paragraph:

1. A brochure cover shall be four (4) colors [~~color~~];
2. The telephone number and or Web site [~~address~~] of the state tourism [~~travel~~] information office shall be included,
3. A brochure shall include a map of the tourism region that shall be:

a. Prominently placed in the brochure;
b. Of sufficient size to be easily read;
c. In sufficient detail to show major traffic arteries, primary cities and towns, lakes and other natural attractions, and keyed to the major attractions addressed in the brochure; and

4. The emphasis of the brochure shall be on the tourism region as a whole, and shall not favor a particular area of the region.

(k) An advertisement may be sold to a business and included in a tourism region brochure to supplement the cost of a tourism region brochure if the.

1. Ratio of advertising to editorial space does not exceed 2:3;
2. Advertiser provides a tourism-oriented service directly to travelers; or
3. Theme and content of advertisements promote tourism in

the region.

(l) Distribution plan and services. A distribution plan for the distribution of brochures to potential tourists shall be developed with the following distribution sources:

1. Tourist commissions;
2. State and local welcome centers;
3. State Tourism [travel] department;
4. Consumer travel shows; and
5. Other similar distribution sources.

(m) A distribution plan shall include a method for responding to inquiries resulting from state, tourism region, and local area tourism advertising campaigns.

(n) If the total printing cost of a publication, excluding layout and design expenses, exceeds $1,000, three (3) written bids shall be obtained. Bids shall not be required for reprints made with only minor changes.

(o) A publication, [or] video, CD, or DVD shall be submitted to the state matching funds program manager for his review and approval, prior to completion.

(p) The state matching funds program manager shall review submissions within five (5) business days after receipt.

(2) Media advertisements and tourism region press kits.

(a) A media tourism advertisement may be placed in a newspaper, magazine or other periodical, on radio, television, video tape travelogue, and electronic media such as the Internet.

(b) A media tourism advertisement shall include:

1. An address, [or] telephone number, or website address to be contacted for more information;

2. The [If possible, use the] official state advertising theme shall be used; and

3. Contain general information about the tourism region in addition to specific information relating to an event, attraction, or geographic area that is promoted in the advertisement.

(c) Media costs.

1. Costs for tourism media advertisements, including media time, production costs, and media placement, shall be eligible for reimbursement.

2. Except as provided by this subsection, advertising placed with media located within a fifty (50) [forty (40)] mile radius shall not be eligible for reimbursement

3. All media advertisement costs placed in a tourist oriented publication shall be eligible for reimbursement.

4. Twenty-five (25) or forty (40) [Fifty (50)] percent of media costs for advertising placed with media located within a fifty (50) [forty (40)] mile radius shall be eligible for reimbursement if the:

a. Organization is located within a fifty (50) [forty (40)] mile radius of a major media market listed in paragraph (d) of this subsection; and

b. Media cost is not a type listed as excluded in paragraph (e) of this subsection.

(d) Major media markets shall be:

1. Cincinnati, Ohio [: Cincinnati Post-Enquirer, WLW-AM, WEBN-FM, WCPO-TV, WLWT-TV, WKRC-TV, WXIX-TV];

2. Evansville, Indiana[: Evansville Courier, WSTO, WBKR (Owensboro), WTVW-TV, WEHT-TV, WFIE-TV];

3. Huntington, West Virginia[: Huntington Herald-Dispatch, WTCR-FM (Ashland), WSAZ-TV, WOWK-TV, WCHS-TV],

4. Louisville, Kentucky[: Louisville Courier-Journal, WHAS-AM, WAMZ-FM, WAVE-TV, WHAS-TV, WLKY-TV, WDRB-TV];

5. Lexington, Kentucky[: Lexington Herald-Leader, WVLK-AM and FM, WLAP-AM and FM, WKYT-TV, WLEX-TV, WTVW-TV, WDKY-TV, WYMT-TV (Hazard)]; [and]

6. Paducah, Kentucky; and[: WKYZ-FM, WDDJ-FM, WPSD-TV.]

7. Bowling Green, Kentucky.

(e) Media advertisement costs shall not be eligible for reimbursement if they are incurred for advertisements that are:

1. [Placed in meeting planners and convention trade publications,

2.] Sponsored or advertised by tourism organizations in tourism region brochures that have been allocated state tourism matching funds; or

2 [3.] Funded through other cooperative advertising programs of the Kentucky Department of Tourism [Travel Development].

(f) Costs associated with media press kits and media relations programs shall be reimbursable [only for tourism region committees].

(3) Brochure distribution services. Rental of rack space for the distribution of eligible promotional materials shall be eligible for reimbursement.

(4) Postage and freight costs. Postage and freight costs for bulk mail, United Parcel Service, mailing firm, and actual postage costs excluding stamps and postage meters shall be eligible for reimbursement if they are incurred in:

(a) Response to general tourist requests, or media or group tour operator inquiries; [or]

(b) Shipping tourism promotional literature and displays for use at consumer travel shows and group tour marketplaces; or[.]

(c) Conventions, meetings or sports marketing expenses.

(5) Billboard and signage costs. Rental of a billboard, tourist oriented directional signage (TODS), fifth legends or attraction logos, including related artwork, design and production costs shall be eligible for reimbursement if it:

(a) Promotes specific attractions, events, availability of food, lodging, camping or other services;

(b) Is placed on interstates or other major access highways outside a twenty (20) mile radius; or

(c) Does not consist solely of language welcoming visitor to a community or region.

(6) Consumer travel show, [and] group tour marketplace, meeting/convention and sports marketing trade shows and expo costs.

(a) Expenses related to attendance at consumer travel shows, [and] group tour marketplaces, meeting/convention and sports marketing trade shows and expo shall be eligible for reimbursement if they:

1. Promote an attraction, event, or geographic area;
2. Are not county fairs, festivals, or other local events;
3. Are not expended for booth space costs at industrial solicitation events[, or convention trade and meeting planners functions];
4. Are expended for consumer travel shows and group tour marketplaces that are located more than forty (40) miles from the event, attraction, or geographical area that is promoted;
5. Are expended for the purchase and maintenance of exhibits such as display assembly, artwork, transparencies, photographs, brochure racks, consumer travel show or group tour marketplace booth space or furniture rental;
6. Registration fees imposed for the interview of prospective group tour operators,
7. Shipping costs of displays and promotional material; or
8. Rental fees for audio-visual equipment and material.

(b) A tourism region group shall be eligible for reimbursement of membership dues for major tourism associations, if:

1. Membership is required to participate in advertising or promotional ventures; and
2. The state matching funds program manager has approved the expense.

(c) A tourism region group shall be eligible for a seventy (70) dollars per diem for a maximum of two (2) persons who serve as staff for tourism region travel booths at a consumer travel show or group tour marketplace if:

1. Booths are manned consistently; and
2. The header, transparencies, photos, and region or local tourism brochures are representative of the tourism region or local areas within the tourism region.

(d) The per diem shall be paid to the tourism region committee[, and the tourism region committee shall not be required to match the per diem].

(e) Transportation costs related to a tourism region's attendance at a consumer travel show or group tour marketplace shall not be eligible for reimbursement.

(7) Familianze trips/site visits.

(a) Familianzation trips and site visits for planners and media are eligible for tourism matching funds if the efforts are based on future business to Kentucky.

(b) Planning events include the following:

1. Meeting planners.
2. Group travel planners;
3. Reunion planners;

4. Sports planners/rights holders; and
5. Media.
(c) Reimbursement shall be based on cash expenditures and not in kind amenities
(d) Airline fees and mileage costs up to $300 based on the state's current mileage rate per person (excluding any additional guests) shall be eligible for reimbursement.
(8) Sponsorship of tourism trade shows and events.
(a) Sponsorship of tourism trade shows, conferences and events are eligible for reimbursement if the sponsorship opportunity is one that could create an economic impact for the state.
(b) Sponsorship opportunities include the following:
1. Meal functions;
2. Tangibles such as name badges, lanyards and registration bags;
3. Education sessions and materials; and
4. overall conference partner or sponsor of total event.
(c) Reimbursement shall be for cash expenditures and not in kind amenities.
(d) Hospitality events that include alcohol or a sponsorship package are not eligible, nor are gratuity, service charges or tips.
(9) Bid fees to assist in bringing events to Kentucky.
(a) Fees involved in securing and attracting events in an effort to attract sports events or conventions and meetings to the state are eligible for reimbursement
(b) To be eligible for reimbursement, the events shall have at least a five (5) year history in other locations. Events previously held in Kentucky are eligible if proof can be provided that it is or will be secured through a competitive bid process
(c) An applicant shall include a letter of award of event when submitting reimbursement.
(10) Internet and Web site.
(a) Costs associated with the design, hosting and maintenance of tourism related web-sites are eligible for reimbursement if the current state tourism brand and logo with a link to the Department of Tourism's web-site and regional web-site are on the applicant's home page.
(b) A web site that contains paid advertisements shall not be eligible for reimbursement.
(c) If applicable, a web-site shall include the following information:
1. Description of points of interest, recreational opportunities and services, including food, lodging, and camping facilities;
2. Landmark features should relate to the area's history of tradition and be of particular architectural interest;
3. Attractions open to the public such as theaters and museums, including the times and date when they are open, the admission fee and the attraction's address, phone number and web-site address;
4. Information on recreational activities and attractions such as fishing, water sports, hiking and golfing and related license information;
5. Listing of area or regional tourism-related events; and
6. Current area maps with major highways and access routes into the area clearly marked as well as mileage from other cities.
(11) The following items shall not be eligible for reimbursement:
(a) [~~Meeting planner guides;~~
~~(b)~~] Industrial incentive brochures;
(b)[~~(c)~~] General community relocation and development brochures;
(c)[~~(d)~~] City or county, or city-county maps or directories that list businesses and services;
(d)[~~(e)~~] Items related to theatrical productions, such as programs, playbills, posters;
(e)[~~(f)~~] Table tents;
(f)[~~(g)~~] Material related to membership and subscription solicitation;
(g)[~~(h)~~] Registration and entry forms;
(h)[~~(i)~~] Event and contest category or regulation material;
(i)[~~(j)~~] Entertainment expenses;
(j)[~~(k)~~] Excluding group tour marketplaces, registration expenses for conferences and meetings;
(k)[~~(l)~~] Research projects such as marketing or feasibility studies;
(l)[~~(m)~~] Except for those approved for tourism region organizations, bumper stickers, posters, banners, flags, postcards, lapel pins, bags, or other types of specialty advertising;
(m)[~~(n)~~] Prizes, trophies, plaques, decorations, paint supplies, and poster board;
(n)[~~(o)~~] Items for resale;
(o)[~~(p)~~] Amounts paid for Kentucky sales tax;
(p)[~~(q)~~] Except for tourism region organizations, stationery, letterhead, envelopes, and other such general office supplies and material;
(q)[~~(r)~~] Salaries or other compensation for the staff or personnel of a tourism region committee;
(r)[~~(s)~~] General operating and administrative costs;
(s)[~~(t)~~] Finance charges or late payment fees;
(t)[~~(u) Sponsorship or seed money used to bring special events or performers to an area;~~
~~(v)~~] Other quick-print material such as flyers, handbills, or circulars; and
(u)[~~(w)~~] Expenditures in violation of law.

[~~Section 7. Tourism Region Strategic Master Plan; Coordination of Efforts. (1) A tourism region committee shall:~~
~~(a) Adopt a strategic master plan for its tourism region for each matching funds program cycle;~~
~~(b) Update the strategic master plan every two (2) years;~~
~~(c) Transmit a copy of the master plan:~~
~~1. To the state matching funds program manager;~~
~~2. No later than October 1 of the matching funds program cycle to which the plan relates; and~~
~~(d) During the matching funds program cycle, utilize the master plan in reaching its decisions concerning the feasibility and desirability of marketing strategies.~~
~~(2) Organizations planning tourism promotions shall:~~
~~(a) Work with the tourism region committee and tourist commission to prevent duplication of projects and to consolidate tourism promotions;~~
~~(b) Inform the county representative of the tourism region of local plans.~~
~~(3)(a) Organizations shall comply with the Americans with Disabilities Act.~~
~~(b) Information on the Americans with Disabilities Act may be obtained from:~~
~~1. Office on the Americans with Disabilities Act, Civil Rights Division, U.S. Department of Justice, P.O. Box 66118, Washington, D.C. 20035-6118; and~~
~~2. Governor's ADA Initiative, ADA Special Advisor to the Governor, Capitol, Room 126-A, 700 Capital Avenue, Frankfort Kentucky 40601, 502-564-2611.~~]

Section 7.[~~8.~~] Matching Funds Distribution and State Match. (1) A tourism region shall be eligible to receive matching funds for specified allowable promotional projects.
(2) The department shall determine the amount of matching funds that will be allocated to regional and local projects.
(3) Subject to the availability of funds, the department shall set aside an amount of the program's matching funds sufficient to provide a state match of up to:
(a) 100 [~~Eighty (80)~~] percent of the costs of an allowable regional promotional project; and
(b) Eighty (80) [~~Fifty (50)~~] percent of the costs of an allowable local promotional project for a convention and visitors' bureau, tourism commission or designated marketing organization; and
(c) Fifty (50) percent of the costs of an allowable local promotional project.

Section 8.[~~9.~~] Application for Tourism Regional Marketing and Matching Funds. (1) An application request may be submitted by a [~~tourism region committee or a~~] local organization that is not a convention and visitors' bureau, tourism commission or designated marketing organization but is a nonprofit entity prior to May 1 for eligible:
(a) Projects that have been or will be completed during the matching funds program cycle; and

(b) Expenses totaling at least $1,000 for a project, or a number of projects.

(2) [~~Applications shall be submitted to the state matching funds program manager on or before October 1,~~

~~(3)(a) An application shall be submitted on a "Tourism Regional Marketing & Matching Funds" application and signed.~~

~~(b)~~] An application request shall include a detailed list of eligible tourism projects that will be completed during the current program cycle, and the following information for each project:

(a)[~~1.~~] Its direct relation to the promotion of tourism;

(b)[~~2.~~] Its ability to attract visitors from outside the immediate area;

(c)[~~3.~~] Its potential to enhance local, tourism region, or state economies;

(d)[~~4. A list of funds, other than state matching funds, that the applicant can obtain;~~

~~5.~~] The cost estimates; and

(e)[~~6.~~] The completion date.

(3)[~~(4)~~] An applicant shall submit proof of its nonprofit status with its application as follows:

(a) A tourism region committee shall submit a copy of its:

1. Federal determination of tax exempt status;

2. Articles of incorporation as a nonprofit, nonstock corporation pursuant to KRS Chapter 273; and

3. Bylaws.

(b) A local tourism commission shall submit a copy of the ordinance establishing it.

(c) Other local organizations shall submit a copy of its:

1. Federal or state determination of tax exempt status; or

2. Articles of incorporation as a nonprofit, nonstock corporation pursuant to KRS Chapter 273.

Section 9.[~~10.~~] Approval of Applications. (1) The [~~Between October 1 and October 15, the~~] state matching funds program manager shall:

(a) Review each timely filed application and determine its eligibility; and

(b) Transmit copies of eligible applications to the members of appropriate tourism region committees.

(2)(a) The [~~Between October 15 and November 30, the~~] state matching funds program manager or assistant state matching funds program manager shall hold allocation meetings in each of the nine (9) tourism regions with the tourism region committee for the region.

(b) Allocation meetings shall be held to:

1. Discuss the regional marketing and matching funds program;

2. Review and establish priorities for local organization applications;

3. Screen local applications for eligibility;

4. Discuss each project's:

a. Direct relationship to tourism promotion;

b. Ability to attract visitors into the tourism region;

c. Impact on local, tourism region, and state economies; and

d. Compatibility with the marketing goals of the tourism region;

5. Establish priorities for funding projects by determining which projects have the greatest potential to increase tourism and stimulate the tourism region and state economies;

6. Recommend the distribution of local funds; and

7. Review and discuss the tourism region application.

(3) A [~~On or before November 30, a~~] tourism region committee shall submit its recommendation for each applicant within its tourism region to the state matching funds program manager.

(4) The [~~Between December 1 and December 31, the~~] state matching funds program manager shall:

(a) Review tourism region committee recommendations; and

(b) Determine the allocation of matching funds that will be granted to tourism region applicants and local applicants.

(5) The state matching funds program manager shall base his allocation determination on:

(a) The items specified in subsection (2)(b) of this administrative regulation;

(b) If applicable, an applicant's successful completion of similar projects; and

(c) The availability of funds.

(6) The [~~On or before January 31, the~~] state matching funds program manager shall mail to each applicant [~~and the chairperson of each tourism region committee~~] a:

(a) "Project Agreement" form to each approved applicant stating the amount of the state matching funds allocation for the matching funds program cycle; or

(b) Letter stating why an applicant's projects have been denied funding; and

(c) Copy of the "Application For Regional Marketing And Matching Funds" submitted by each applicant, indicating the approved and disapproved projects.

(7) An [~~On or before February 15, an~~] applicant shall sign and return the "Project Agreement" form to the state matching funds program manager.

Section 10.[~~11.~~] Reimbursement. (1)(a) A local project shall be eligible for reimbursement for eighty (80) or fifty (50) percent of its total expenditures that do not exceed the amount allocated by the state matching funds program.

(b) A tourism region project shall be eligible for reimbursement for 100 [~~eighty (80)~~] percent of its total expenditures that do not exceed the amount allocated by the state matching funds program.

(2) Requests for reimbursement shall not be made until at least $1,000 has been expended.

(3) Reimbursement shall be limited to projects that[~~,~~]

(a) Were included on an application request;

(b) Were approved by the state matching funds program manager; and

(c) Have been completed.

(4) In-kind contributions shall not be reimbursed, and shall not be included as part of an applicant's match.

(5) Requests for reimbursement shall be made on the "Reimbursement Request[~~–Phase I~~]" form. The "Reimbursement Request[~~–Phase I~~]" form shall.

(a) Be submitted to the state matching funds program manager on or before February 1 or August 1 [~~Be filed with the department on or before May 1~~];

(b) Be signed; and

(c) State the federal identification number of the organization.

(6) Checks submitted as documentation shall be[~~:~~

~~(a) Not be dated prior to May 1 of the current program cycle;~~

~~(b) Have been~~] issued by the organization that applied for matching funds, unless otherwise approved by the state matching funds program manager.

(7) The following information shall be attached to the "Reimbursement Request [~~–Phase I~~]" form:

(a) A copy [~~Two (2) copies~~] of each vendor's invoice;

(b) A copy [~~Two (2) copies~~] of the front and back of each canceled check;

(c) For local projects, proof of payment of all expenditures;

(d) For tourism region projects, proof of payment of twenty (20) percent of expenditures;

(e) Four (4) completed brochures;

(f) For publications or videos, a copy [~~two (2) copies~~] of invoices, with a breakdown of layout and design costs, the number of copies printed, and other related expenses;

(g) If printing costs exceed $1,000, a copy of three (3) written bids;

(h) One (1) duplicate of a completed video, CD, or DVD;

(i) One (1) original tear sheet of advertisements as they appeared in the print media including date of issue, and for regional projects a cover of the publication;

(j) One (1) typed transcript or a tape of a radio, television, or video-tape travelogue advertisement;

(k) A copy [~~For a tourism region, two (2) copies~~] of a [~~tourism region~~] press kit;

(l) Documentation of the distance of media from the event, attraction, or area promoted;

(m) One (1) photograph of a completed billboard and signage advertisement;

(n) Documentation of the location and dates of service for billboard and signage rentals;

(o) Documentation of the location, distribution routes, and

dates for distribution services;

(p) Documentation of postage expenses, including postage invoices or paid receipts, list of names, addresses, and material mailed;

(q) Verification of attendance at consumer travel shows or group tour marketplaces, including signed agreements or contracts;

(r) Verification of regional travel show or group tour marketplace per diem, including a completed and signed "Per Diem Reimbursement Form"; and

(8) For tourism region projects, proof of payment of the remaining eighty (80) percent of expenditures shall be submitted after receipt of state matching funds; and

(9) The state matching funds program manager may request additional documentation, if the submitted documentation is incomplete or unclear.

Section 11 [~~12~~] Forfeited Funds. (1) Funds allocated to an approved project shall be forfeited if:

(a) Documentation required by the provisions of this administrative regulation is not submitted before February 1 or August 1 [~~May 1~~];

(b) A project approved by a tourism region committee is not eligible for tourism matching funds;

(c) An approved project does not materialize;

(d) A completed project did not remain in compliance with program requirements; or

(e) Funding is denied because the expenses of an approved project are improperly documented.

(2) Forfeited funds shall be redistributed by the state matching funds program manager to other approved projects. [~~pursuant to the provisions of Section 13 of this administrative regulation.~~

~~Section 13. Reimbursement: Phase II. (1) On or before May 1, applicants may request reimbursement for the costs of a project that was approved for the current matching funds program cycle that are in excess of the allocation designated on the "Project Agreement" form for the project.~~

~~(2) Requests for reimbursement for projects or costs specified in subsection (1) of this section shall be submitted on a "Reimbursement Request Phase II" form.~~

~~(3)(a) Documentation for reimbursement shall not be dated prior to May 1 of the current matching funds program cycle for which reimbursement is sought.~~

~~(b) Documentation shall be made pursuant to the provisions of Section 11 of this administrative regulation.~~]

Section 12 [~~14~~] Audits. The department may request the State Auditor to audit a tourism project governed by this administrative regulation.

Section 13.[~~15.~~] Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Application, Tourism Regional Marketing and Matching Funds, (Form Rev '96)";

(b) "Reimbursement Request [~~Phase I~~] - Initial Allocation, Tourism Regional Marketing and Matching Funds, (Form Rev '05 [~~'96~~])";

(c) [~~"Reimbursement Request – Phase II, Tourism Regional Marketing and Matching Funds, (Form Rev '96)";~~

~~(d)~~] "Project Agreement, Tourism Regional Marketing and Matching Funds, (Form Rev '96)";

(d)[~~(e)~~] "Reimbursement Checklist, Tourism Regional Marketing and Matching Funds, (Form Rev '05 [~~'96~~])";

(e)[~~(f)~~] "Tourism Region Per Diem Reimbursement Form, Tourism Regional Marketing and Matching Funds, (Form Rev '96)";

(f)[~~(g) "Summary of Program Cycle, Tourism Regional Marketing and Matching Funds, (Rev '96)";~~

~~(h)~~] Tourism Regions map, Tourism Regional Marketing and Matching Funds, (Rev '96)"; [~~and~~]

(g)[~~(i)~~] Samples of Forms (Rev '96), which includes completed examples of the forms incorporated by reference in paragraphs (a), (b), and (c) of this subsection; and[-]

(2) These documents may be inspected, copied, or obtained from the Department of Tourism [~~Travel Development~~], Division of Marketing and Advertising, Capital Plaza Tower, 500 Mero Street, Room 2200, Frankfort Kentucky 40601, (telephone (502) 564-4930, fax (502) 564-5695), Monday through Friday, 8 a.m. to 4.30 p.m.

RANDALL L. FIVEASH, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 27, 2007, at 10 a.m. at the Department of Tourism in the 22nd Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, KY. Individuals interested in attending this hearing shall notify this agency in writing not later than five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Ellen Benzing, General Counsel, Commerce Cabinet, Capitol Plaza Tower, 24th Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone 502 564-4270, ext. 225 fax 502 564-1079.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contract Person: Ellen F. Benzing

(1) Provide a brief summary of:

(a) What the administrative regulation does: This administrative regulation establishes the procedures for applying for reimbursements through the Regional Marketing and Matching Funds Program within the Department of Tourism. The administrative regulation also establishes the nine (9) tourism regions within the state of Kentucky.

(b) The necessity of the administrative regulation: This administrative regulation is necessary so that those promotional projects within the tourism regions and local nonprofit organizations will be aware of the procedures and eligibility requirements for participating in the program.

(c) How the administrative regulation conforms to the content of the authorizing statutes: KRS 148.525(2) and (3) state that the Division of Advertising Services shall be responsible for the state matching fund tourism advertising program and that the Commissioner is authorized to promulgate administrative regulations to carry out the purposes of this provision. This administrative regulation establishes the procedures, requirements and components within the Regional Marketing and Matching Funds Program within the Marketing and Advertising Services Division of the Department of Tourism.

(d) How will this administrative regulation assist in the effective administration of the statutes: See response (c) above. The administrative regulation establishes a process and requirements within a Department of Tourism program that is specifically carrying out one of the purposes of the Department of Tourism, marking tourism in Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment updates the administrative regulation and provides the procedures for seeking reimbursement for new projects added to the program including costs associated with bulk mail, UPS, mailing first and actual postage costs; conventions, meetings or sports marketing expenses; familiarization trips and site visits; sponsorship of tourism trade shows and events; bid fees associated with bringing events to Kentucky; and Internet and web-site costs.

(b) The necessity of the amendment to this administrative

regulation: The necessity of the amendment is to all allow for reimbursements that are tourism marketing related and broaden the scope of eligibility within the program.

(c) How the amendment conforms to the content of the authorizing statutes: See 1(c) and (d) above. KRS 148.525(2) and (3) state that the Division of Advertising Services shall be responsible for the state matching fund tourism advertising program and that the Commissioner is authorized to promulgate administrative regulations to carry out the purposes of this provision. This administrative regulation establishes the procedures, requirements and components within the Regional Marketing and Matching Funds Program within the Marketing and Advertising Services Division of the Department of Tourism.

(d) How the amendment will assist in the effective administration of the statutes: See response above.

(3) List the type and number of individuals, businesses, organizations or state and local governments that will be affected: Approximately 130 applicants participated in the program this past year. Applicants are either tourism regions or nonprofit organizations. The Department of Tourism expects that the number of applicants will remain at approximately 130.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There are no actions that the regulated entities, tourism regions and nonprofits, will have to take to comply with the amendment, other than be aware that the are more projects eligible fore reimbursement within the program. This regulation, tourism staff and the tourism website will provide the notice and education to inform.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost associated with conforming to this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits that will accrue will be that tourism regions and nonprofits can participate in more marketing events that previous to the establishment of the new eligible projects. There will be more opportunity for participation in marketing efforts where reimbursement can be made.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: This administrative regulation has been in existence since 1996. The administrative costs associated with the implementation of this program have been within the Tourism budget and new costs are not expected to result from this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The current budget of the Department of Tourism provides the funding for the staff to oversee the Regional Marketing and Matching Funds Program. The Department receives general funds. Staff oversee and administer the program and thus provide "enforcement" or compliance with the application and reimbursement procedures.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It is not necessary to create a fee or increase funding to administer the Regional Marketing and Matching Funds Program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees, either directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not applied to this administrative regulation because all project applicants and nonprofit organizations who apply for reimbursement for tourism marketing projects are required to adhere to the same procedures within this administrative regulation. There are not separate tiers of procedures for different organizations or persons who participate in this program.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Tourism and the Regional Marketing and Matching Funds Program will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 148.525 authorizes the Commissioner of the Department of Tourism to promulgate administrative regulations to carry out the provisions of KRS 148.522. KRS 148.522 includes the authority and responsibility for the promotion, development and support services for the tourism industry in Kentucky. The Regional Marketing and Matching Funds Program is organized within the Marketing and Advertising Division established in KRS 148.522.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Tourism will not change. The current budget of the Department of Tourism funds the administrative costs of the Regional Marketing Funds Program. Two staff persons within the Department of Tourism administer the program. The monies that the Regional Marketing and Matching Funds Program distributes within the tourism regions from the 1% transient room tax (KRS 142.400) are for tourism projects and are not used to administer the program.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated from the administration of this administrative regulation. However, the Regional Marketing Funds Program itself will generate funds via the transient room tax (KRS 142.400). For fiscal year '05 – '06 the program had 6.8 million dollars to distribute out of the projected 8 million. The amount was decreased starting in FY 06/07 to the 5.5 million.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Again, this administrative regulation will not generate money with its application, as a fee is not charged to an applicant. However, the program itself does generate money (see KRS 142.400, 142.402, 142.404 and 142.406).

(c) How much will it cost to administer this program for the first year? The program originated over twenty (20) years ago. The Department of Tourism staff has continuously administered the program since its inception. Salaries have fluctuated since the first year of the program.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:015. Boats and motor restrictions.

RELATES TO: KRS 150.010, 150.090, 150.620, 150.625, 150.990, 235 280, 235.990

STATUTORY AUTHORITY: KRS 235.280

NECESSITY, FUNCTION, AND CONFORMITY: KRS 235.280 authorizes the department to promulgate administrative regulations

to govern the fair, reasonable, equitable and safe use of all waters of this state. KRS 150.620 and 150.625 authorize the department to promulgate administrative regulations governing lands and waters it has acquired. This administrative regulation is necessary to limit the size of boats and motors on small lakes for safety reasons and to minimize interference with other users.

Section 1. (1) A person shall not operate on the lakes listed in subsection (2) of this section, except as otherwise specified:

(a) A house boat;

(b) A monohull boat, with a center line length exceeding eighteen (18) feet, six (6) inches except for the following lakes where a monohull boat with a center line length up to twenty-two (22) feet can be operated:

1. Cedar Creek Lake, Lincoln County;
2. Guist Creek Lake, Shelby County; and
3. Lake Malone, Muhlenburg and Logan County.

(c) A pontoon boat with a float or decking exceeding twenty-two (22) feet except for the following lakes where a pontoon boat with a float or decking up to thirty (30) feet can be operated:

1. Cedar Creek Lake, Lincoln County;
2. Lake Beshear, Caldwell County; and
3. Lake Malone, Muhlenburg and Logan County

(2) List of lakes:

1. Arrowhead Slough, Ballard County;
2. Beaver Creek Lake, Anderson County;
3. Beaver Dam Slough, Ballard County;
4. Bert Combs Lake, Clay County;
5. Big Turner Lake, Ballard County;
6. Boltz Lake, Grant County;
7. Briggs Lake, Logan County;
8. Bullock Pen Lake, Grant County;
9. Burnt Pond, Ballard County;
10. Burnt Slough, Ballard County;
11. Butler Lake, Ballard County;
12. Carnico Lake, Nicholas County;
13. Carpenter Lake, Daviess County;
14. Carter Caves Lake, Carter County;
15. Cedar Creek Lake, Lincoln County;
16. Corinth Lake, Grant County;
17. Cross Slough, Ballard County;
18. Cypress Slough, Ballard County;
19. Deep Slough, Ballard County;
20. Dennie Gooch Lake, Pulaski County;
21. Elmer Davis Lake, Owen County;
22. Fishpond Lake, Letcher County;
23. Goose Lake, Muhlenberg County;
24. Greenbo Lake, Greenup County;
25. Guist Creek Lake, Shelby County;
26. Happy Hollow Lake, Ballard County;
27. Island Lake, Ohio County;
28. Kincaid Lake, Pendleton County;
29. Kingdom Come Lake, Harlan County;
30. Kingfisher Lakes, Daviess County;
31. Lake Beshear, Caldwell County;
32. Lake Chumley, Lincoln County;
33. Lake Malone, Muhlenberg County;
34. Lake Mauzy, Union County;
35. Lake Reba, Madison County;
36. Lake Washburn, Ohio County;
37. Lebanon City Lake, Marion County;
38. Lincoln Homestead Lake, Washington County;
39. Little Green Sea, Ballard County;
40. Little Turner Lake, Ballard County;
41. Long Pond, Ballard County;
42. Marion County Lake, Marion County;
43. Martin County Lake, Martin County;
44. McNeely Lake, Jefferson County;
45. Metcalfe County Lake, Metcalfe County;
46. Mill Creek Lake, Wolfe County;
47. Mitchell Lake, Ballard County;
48. Pan Bowl Lake, Breathitt County;
49. Pikeville City Lake, Pike County;
50. Sandy Slough, Ballard County;
51. Shanty Hollow Lake, Warren County;
52. Shelby Lake, Ballard County;
53. South Lake, Ohio County;
54. Spurlington Lake, Taylor County;
55. Swan Lake, Ballard County;
56. Twin Pockets Slough, Ballard County;
57. Wilgreen Lake, Madison County.

(2) [~~Except as otherwise specified in this section, a person shall not operate on the lakes listed in this administrative regulation:~~

~~(a) A houseboat;~~

~~(b) A monohull boat, with a centerline length exceeding eighteen (18) feet, six (6) inches;~~

~~(c) A pontoon boat with a float or decking exceeding twenty-two (22) feet;~~

~~(d) A boat motor without an underwater exhaust; or~~

~~(e) Except in a designated skiing zone, a boat faster than idle speed when passing a boat with an occupant actively engaged in fishing.~~

~~(2) A person shall not operate:~~

~~(a) A monohull boat with a centerline length exceeding twenty-two (22) feet on:~~

~~1. Guist Creek Lake;~~

~~2. Lake Malone; or~~

~~3. Cedar Creek Lake.~~

~~(b) A pontoon boat with a float or decking exceeding thirty (30) feet on:~~

~~1. Lake Malone;~~

~~2. Lake Beshear; or~~

~~3. Cedar Creek Lake.~~

~~(3)~~] Length restrictions in this section shall not apply to a canoe

(4) A person shall not operate a personal watercraft [~~water craft~~] as defined in KRS 235.010 [~~253.010~~] on Cedar Creek Lake.

Section 2. A person shall not operate:

(1) A boat motor without an underwater exhaust; or

(a) Except in a designated skiing zone, a boat faster than idle speed when passing a boat with an occupant actively engaged in fishing on:

1. Beaver Lake, Anderson County;
2. Boltz Lake, Grant County;
3. Bullock Pen Lake, Grant County;
4. Carnico Lake, Nicholas County;
5. Cedar Creek Lake, Lincoln County;
6. Corinth Lake, Grant County;
7. Elmer Davis Lake, Owen County;
8. Greenbo Lake, Owen County;
9. Guist Creek Lake, Shelby County;
10. Kincaid Lake, Pendleton County;
11. Lake Beshear, Caldwell County;
12. Lake Malone, Muhlenburg County;
13. Pan Bowl Lake, Breathitt County;
14. Shanty Hollow Lake, Warren County;
15. Swan Lake, Ballard County;
16. Wilgreen Lake, Madison County.

Section 3. A person shall not operate an electric or an internal combustion boat motor on:

(1) Dennie Gooch Lake, Pulaski County;
(2) Kingdom Come Lake, Harlan County; and
(3) Lake Chumley, Lincoln County[~~;~~

~~(2) Dennie Gooch Lake, Pulaski County;~~

~~(3) Martin County Lake, Martin County; and~~

~~(4) Kingdom Come Lake, Harlan County~~].

Section 4. [~~3.~~] A person shall not operate an internal combustion boat motor and shall only be allowed to use an electric trolling motor on:

(1) Arrowhead Slough, Ballard County;
(2) Beaver Dam Slough, Ballard County;
(3) Bert Combs Lake, Clay County;
(4) Big Turner Lake, Ballard County;
(5) Briggs Lake, Logan County;

(6) Burnt Pond, Ballard County;
(7) Burnt Slough, Ballard County;
(8) Butler, Ballard County;
(9) Carpenter Lake, Daviess County;
(10) Carter Caves Lake, Carter County;
(11) Cross Slough, Ballard County;
(12) Cypress Slough, Ballard County;
(13) Deep Slough, Ballard County;
(14) Fishpond Lake, Letcher County;
(15) Goose Lake, Muhlenberg County;
(16) Happy Hollow Lake, Ballard County;
(17) Island Lake, Ohio County;
(18) Kingfisher Lake, Daviess County;
(19) Lake Mauzy, Union County;
(20) Lake Reba, Madison County;
(21) Lake Washburn, Ohio County;
(22) Lebanon City Lake, Marion County;
(23) Lincoln Homestead Lake, Washington County;
(24) Little Green Sea, Ballard County;
(25) Little Turner Lake, Ballard County;
(26) Long Pond, Ballard County;
(27) Marion County Lake, Marion County;
(28) Martin County Lake, Martin County;
(29) McNeely Lake, Jefferson County;
(30) Metcalfe County Lake, Metcalfe County;
(31) Mill Creek Lake, Wolfe County;
(32) Mitchell Lake, Ballard County;
(33) Pikeville City Lake, Pike County;
(34) Sandy Slough, Ballard County;
(35) Shelby Lake, Ballard County;
(36) South Lake, Ohio County;
(37) Spurlington Lake, Taylor County; or
(38) Twin Pockets Slough, Ballard County. [~~Carter Caves Lake, Carter County;~~
~~(2) Spurlington Lake, Taylor County;~~
~~(3) Marion County Lake, Marion County;~~
~~(4) Lake Washburn, Ohio County;~~
~~(5) Bert Combs Lake, Clay County;~~
~~(6) McNeely Lake, Jefferson County;~~
~~(7) Lake Mauzy, Union County;~~
~~(8) Carpenter Lake and Kingfisher Lakes, Daviess County;~~
~~(9) Metcalfe County Lake, Metcalfe County;~~
~~(10) Briggs Lake, Logan County;~~
~~(11) Big Turner Lake, Ballard County;~~
~~(12) Little Turner Lake, Ballard County;~~
~~(13) Shelby Lake, Ballard County;~~
~~(14) Mitchell Lake, Ballard County;~~
~~(15) Happy Hollow Lake, Ballard County;~~
~~(16) Burnt Slough, Ballard County;~~
~~(17) Butler, Ballard County;~~
~~(18) Sandy Slough, Ballard County;~~
~~(19) Long Pond, Ballard County;~~
~~(20) Cross Slough, Ballard County;~~
~~(21) Little Green Sea, Ballard County;~~
~~(22) Burnt Pond, Ballard County;~~
~~(23) Arrowhead Slough, Ballard County;~~
~~(24) Deep Slough, Ballard County;~~
~~(25) Beaver Dam Slough, Ballard County;~~
~~(26) Cypress Slough, Ballard County;~~
~~(27) Twin Pockets Slough, Ballard County;~~
~~(28) Lake Reba, Madison County;~~
~~(29) Lincoln Homestead Lake, Washington County;~~
~~(30) Goose, Muhlenberg County;~~
~~(31) Island, Ohio County;~~
~~(32) South, Ohio County;~~
~~(33) Lebanon City Lake, Marion County;~~
~~(34) Mill Creek Lake, Wolfe County; or~~
~~(35) Pikeville City Lake, Pike County.~~]

Section 5. [~~4.~~] On the following lakes, a person shall not operate a boat motor larger than ten (10) horsepower:
(1) Beaver Lake, Anderson County;
(2) Boltz Lake, Grant County;
(3) Bullock Pen Lake, Grant County;
(4) Corinth Lake, Grant County;
(5) Elmer Davis Lake, Owen County;
(6) Kincaid Lake, Pendleton County;
(7) Shanty Hollow Lake, Warren County; and[~~Shanty Hollow Lake, Warren County;~~
~~(2) Bullock Pen Lake, Grant County;~~
~~(3) Boltz Lake, Grant County;~~
~~(4) Kincaid Lake, Pendleton County;~~
~~(5) Elmer Davis Lake, Owen County;~~
~~(6) Beaver Creek Lake, Anderson County;~~
~~(7) Corinth Lake, Grant County; and~~]
(8) Swan Lake, Ballard County.

Section 6. [~~5.~~] A person shall not operate:
(1) A boat motor larger than 150 horsepower on Lake Beshear, or Lake Malone, unless provided by subsection 2 of this section.
(2) At Lake Malone, motorboats with 200 horsepower or less shall be permitted from the first weekend after Labor Day through the first weekend prior to Memorial Day.
(3) A motorboat faster than idle speed on:
(a) Carnico Lake, Nicholas County;
(b) Greenbo Lake, Greenup County;
(c) Pan Bowl Lake, Breathitt County; or
(d) Wilgreen Lake, Madison County.

Section 7. [~~6.~~] A person operating a boat motor larger than ten (10) horsepower shall not exceed idle speed at any time on the following lakes:
(1) Herb Smith/Cranks Creek Lake; and
(2) Martins Fork Lake.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 8, 2007
FILED WITH LRC: July 12, 2007 at 11 a.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2007, at 10 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack
(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes the size of boats and motors that can be used on small lakes.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to limit the size of boats and motors on small lakes to insure public safety and to minimize interference with other users.
(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 235.280 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations necessary to govern the fair, reasonable, equitable, and safe use of all waters of this state.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This adminis-

trative regulation will carry out the purposes of KRS 150 620 and 150.625 and allow fair, reasonable, equitable, and safe use of the waters that the Department of Fish and Wildlife Resources has acquired.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Martin County Lake is 5 acres in size while Fishpond Lake is 32 acres. Previously, use of internal combustion (outboard) and electric motors were prohibited on Martin County Lake while a local ordinance prohibited the operation of outboard motors on Fishpond Lake. This amendment will allow the use of electric trolling motors only on both these small lakes.

(b) The necessity of the amendment to this administrative regulation: This change will increase angler access and reduce user interference at these lakes.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Those affected by this administrative regulation are persons who boat on Martin County Lake and Fishpond Lake.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Persons who want to boat on Martin County Lake and Fishpond Lake can do so by use of electric motors only. Outboard motors cannot be used at any time on either lake.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs incurred to anyone as a result of complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Persons will still be able to access both lakes using a boat. Safety on both of these small lakes will increase as a result. Also, interference to people fishing from a boat will be reduced as wakes produced from an outboard motor will be eliminated.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost to the agency as a result of this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the state Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not used because this regulation applies to all people wishing to boat at both Martin County Lake and Fishpond Lake.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 235.280 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations necessary to govern the fair, reasonable, equitable, and safe use of all waters of Kentucky.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Fish and Wildlife Resources will not change. The current budget of the Department of Fish and Wildlife Resources funds the administrative cost while the Division of Law Enforcement already oversees the enforcement of administrative regulations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:155. Commercial fishing requirements.

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to prescribe by administrative regulation the methods and devices used to take wildlife, as well as the buying and selling of wildlife. The function of this administrative regulation is to regulate taking fish for commercial use, to avoid conflicts with other interests, and to utilize and conserve the populations of these fishes.

Section 1. Definitions. (1) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license

(2) "Commercial fishing gear" means the equipment described in 301 KAR 1:146.

(3) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(4) "Sport fish" means those species so designated by 301 KAR 1:060.

(5) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

Section 2. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than one (1) unlicensed helper.

(2) An unlicensed helper shall not use commercial fishing gear or sell fish unless he is accompanied by a licensed commercial fisherman.

Section 3 Tagging And Using Commercial Gear. A person

shall:

(1) Tag commercial gear so that a wildlife and boating officer can find and read the tag without undue difficulty.

(2) Not use commercial gear:

(a) Within fifty (50) yards of the outlet or inlet of an overflow lake.

(b) Within fifty (50) yards of the mouth of a stream except the mouth of the Ohio River.

(3) Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; and

(b) For a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes.

Section 4. Commercial Fishing Season and Size Limits. (1) commercial fishing season shall be open year round in the waters listed in 301 KAR 1:150 with the following exceptions:

(a) As described in 301 KAR 1:140 for Kentucky and Barkley lakes;

(b) The commercial fishing season for shovelnose sturgeon (Scaphirhynchus platorynchus) shall extend from October 15 through May 15.

(2) A commercial fisherman must have in their possession a valid commercial fishing license and a commercial shovelnose sturgeon permit to have shovelnose sturgeon and their eggs in their possession.

(3) There shall be no size limits on any commercially-harvested rough fish except that a commercial fisherman shall only harvest shovelnose sturgeon between twenty-four (24) and thirty-two (32) inches, as measured from tip of snout to the fork of the tail fin.

Section 5. Fish Species Ineligible for Commercial Harvest. (1) A commercial fisherman shall not take:

(a) Sport fish listed in 301 KAR 1.060;

(b) Pallid sturgeon (Scaphirhynchus albus), a federally-endangered species; or

(c) Lake sturgeon (Acipenser fulvescens).

(2) If a commercial fisherman mistakenly catches a fish listed in subsection (1) of this section, he shall immediately return the fish, without undue injury, to the waters where it was taken.

Section 6. Tending Gear and Removing Fish. A person shall:

(1) Tend and remove the fish from:

(a) Baited hoop nets or slat traps at least every seventy-two (72) hours.

(b) Other commercial fishing gear at least every twenty-four (24) hours.

(2) No eggs of any species of fish shall be removed or possessed outside of the fish's body cavity while on the water or adjacent bank.

(3) Remove commercial fishing gear from the water when he has finished fishing.

Section 7. Reporting. (1) A commercial fisherman shall report his catch monthly to the department.

(a) By the tenth day of each month;

(b) On forms provided by the department.

(2) The department shall not renew the license of a commercial fisherman who does not submit:

(a) A report for each month of the license year, including a month during which he did not fish; or

(b) The information required on the report form.

(3) The report form shall include the following information, if applicable:

(a) Days of month fished,

(b) Water body fished;

(c) Kind of gear used, including:

1. Gill net;
2. Trammel net;
3. Hoop net;
4. Fishing pole,
5. Trot line;
6. Slat trap;
7. Seine; and
8. Dip net, and

(d) Weight of the catch by species.

Section 8. License Revocation and Nonrenewal. The Department shall:

(1) Revoke the commercial fishing license of a person that has been convicted of a federal commercial fishing violation or the following state violations involving commercial fishing:

(a) Use of illegal commercial gear;

(b) Placement of commercial fishing gear in a restricted area;

(c) Taking of ineligible species of fish;

(d) Commercially fishing in waters not open to commercial fishing; or

(e) Nonreporting or falsifying of commercial harvest data.

(2) Not renew the commercial fishing license for a period of up to three (3) years, as determined by the commissioner, of a person that has been convicted of a federal commercial fishing violation or state violations involving commercial fishing listed in subsection 1 of this section.

Section 9. Incorporation by Reference. (1) The Monthly Report of Commercial Fish Harvest in Kentucky, 2004.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Fish and Wildlife Resources, #1 Sportsman's Lane ~~[Game Farm Road]~~, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 8, 2007
FILED WITH LRC: July 12, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2007, at 11 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation determines regulations and requirements for commercial fishing in the Commonwealth of Kentucky.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations necessary to regulate commercial fishing in the Commonwealth of Kentucky.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by defining the requirements for commercial fishing in the Commonwealth of Kentucky.

(2) If this is an amendment to an existing administrative regula-

tion, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that all commercial fishermen must have in their possession a valid commercial fishing license and a commercial shovelnose sturgeon permit to have shovelnose sturgeon and their eggs in their possession.

(b) The necessity of the amendment to this administrative regulation: These permit requirements exist in 301 KAR 3:022 - License, Tag, and Permit Fees; however, it was not directly linked to this regulation (Commercial Fishing Requirements). This amendment will aid both commercial anglers and Kentucky Conservation Officers on the commercial fishing requirements for shovelnose sturgeon

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes. See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All commercial fishermen who fish for shovelnose sturgeon and their eggs will be affected by this administrative regulation. A total of 22 commercial fishermen purchased a shovelnose sturgeon permit during the period from October 2006 through May 2007.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: All commercial fishermen targeting shovelnose sturgeon must have in their possession a valid commercial fishing license and a commercial shovelnose sturgeon permit to possess shovelnose sturgeon and their eggs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs incurred to anyone as a result of complying with this administrative regulation

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): All commercial anglers annually receive a copy of this regulation. The requirements relating to shovelnose sturgeon harvest will be explicit to avoid any future misunderstandings.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost to the agency as a result of this administrative regulation.

(b) On a continuing basis: There will be no cost on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established. The fees were established previously.

(9) TIERING: Is tiering applied? (Explain why or why not). Tiering was not used because all shovelnose sturgeon permits are equally available to all commercial anglers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department to promulgate administrative regulations necessary to establish commercial fishing requirements that are necessary to protect fish from being over harvested.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Fish and Wildlife Resources will not change. The current budget of the Department of Fish and Wildlife Resources funds the administrative and distributional cost while the Division of Law Enforcement already oversees the enforcement of administrative regulations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for state or local government for the first year. These fees were established previously.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Commercial anglers will be required to purchase the shovelnose sturgeon permits on an annual basis. The cost of this annual permit if $500. From October 2006 through May 2007, a total of 22 permits were purchased, generating a total of $11,000.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-)
Expenditures (+/-):
Other Explanation:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:201. Recreational fishing limits.

RELATES TO: KRS 150.470, 150.990(2)
STATUTORY AUTHORITY: KRS 150.025(1), 150 470
NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing This administrative regulation establishes fish size limits, daily catch limits, and field possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait" means a lure or fly:
(a) Made of:
1. Wood,
2 Metal;
3. Plastic;
4. Feathers;
5. Preserved pork rind; or
6. A similar inert material; and
(b) Not having attached:
1. An insect;
2. Minnow;
3. Fish egg;
4. A worm;
5. Corn;
6. Cheese;
7. Cut bait; or
8. Similar organic bait substance including dough bait, putty or paste-type bait designed to attract fish by taste or smell.

(2) "Chumming" means placing materials upon which fish

might eat in the water for the purpose of attracting fish to a particular area in order that they might be taken.

(3) "Cull" means to replace a fish in the daily creel limit with another fish of the same species.

(4) "Daily limit" or "creel limit" means the maximum number of a particular species or group of species a person may legally take in one (1) day or have in possession while fishing.

(5) "Daylight hours" are defined by KRS 150 010(6).

(6) "Kentucky bass" means the following with a patch of teeth on its tongue:

(a) Largemouth bass;

(b) Kentucky bass; or

(c) Coosa bass.

(7) "Lake" means impounded waters from the dam upstream to the first riffle on the main stem river and tributary streams.

(8) "Length" means the distance of a fish which is measured while laid flat on a ruler with the mouth closed and tail lobes squeezed together.

(9) "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(10) "Recreational fishing" means the act of taking or attempting to take for personal use, and not for sale, any freshwater fish species by traditional fishing methods, including a line that is held in the hand or is attached to a rod that is held in the hand or closely attended, and to which one or more hooks are attached.

(11) "Release" means to return a fish:

(a) In the best possible physical condition;

(b) Immediately after removing the hook;

(c) To the water from which it was taken; and

(d) In a place where the fish's immediate escape shall not be prevented.

(12) [~~(11)~~] "Seasonal catch and release for trout season" means a trout stream with a specific time period when no trout shall be harvested or possessed and where the use of artificial bait is the only bait permitted.

(13) [~~(12)~~] "Single hook" means a hook with no more than one (1) point.

(14) [~~(13)~~] "Size limit" means the minimum legal length of a fish

(15) [~~14~~)] "Slot limit" means that a person:

(a) Shall release fish within a specified minimum and maximum size; and

(b) May keep fish above and below the protected size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation or by 301 KAR 1:180, a person fishing in public or private waters shall observe the following daily possession and size limits.

(a) Black bass: daily limit, six (6); possession limit, twelve (12).

1. Largemouth bass and smallmouth bass: size limit, twelve (12) inches.

2. Kentucky bass and Coosa bass: no size limit.

(b) Rock bass: daily limit, fifteen (15); possession limit, thirty (30), no size limit.

(c) Sauger, walleye, and their hybrids: daily limit, singly or in combination, six (6); possession limit, twelve (12); size limit, walleye and their hybrids, fifteen (15) inches; no size limit for sauger.

(d) Muskellunge: daily limit, one (1), possession limit, two (2); size limit, thirty (30) inches.

(e) Chain pickerel: daily limit, five (5), possession limit, ten (10); no size limit.

(f) White bass, hybrid striped bass, and yellow bass, singly or in combination: daily limit, fifteen (15); possession limit, thirty (30); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

(g) Striped bass: daily and possession limit, five (5), size limit, fifteen (15) inches.

(h) Crappie. daily limit, thirty (30); possession limit, sixty (60); no size limit.

(i) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit on rainbow trout; twelve (12) inch size limit on brown trout.

(j) Redear sunfish: daily limit; twenty (20); possession limit, forty (40); no size limit.

(2) A person shall release grass carp caught from a lake owned or managed by the department.

(3) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation,

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species, if a person has in his possession the daily limit for that species established by this administrative regulation.

(4) A person shall not remove any part of the head or tail of a fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:

(a) Obtain the fish from a licensed fish propagator or other legal source; and

(b) Retain a receipt or other written proof that the fish were legally acquired.

(6) A person shall release trout unless he:

(a) Has a valid trout permit;

(b) Is exempted from trout permit requirements by KRS 150.170(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.

(1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.

(2) Barkley Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches

(b) Crappie: size limit, ten (10) inches; daily limit, twenty (20); possession limit, forty (40).

(c) Sauger: size limit, fourteen (14) inches.

(3) Barren River Lake, including:

(a) Barren River to the Highway 100 bridge;

(b) Long Creek to the Highway 100 bridge;

(c) Beaver Creek to the Highway 1297 bridge;

(d) Skaggs Creek to the Mathews Mill Road bridge; and

(e) Peter Creek to the Peter Creek Road bridge

1. Crappie: size limit, nine (9) inches.

2. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.

(4) Beaver Lake, Anderson County.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(5) Bert Combs Lake, Clay County. A person shall not possess shad or use shad for bait.

(6) Beshears Lake, Caldwell County,[-] channel catfish: size limit, twelve (12) inches.

(7) Boltz Lake, Grant County

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(8) Briggs Lake, Logan County a person shall not possess shad or use shad for bait.

(9) Buckhorn Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Muskellunge: size limit, forty (40) inches.

(c) Crappie size limit, nine (9) inches.

(10) Bullock Pen Lake, Grant County [-] channel catfish: size limit, twelve (12) inches.

(11) Carnico Lake, Nicholas County [-] largemouth bass, size limit fifteen (15) inches

(12) Carpenter Lake, Daviess County A person shall not possess shad or use shad for bait.

(13) Carr Creek Lake.

(a) Largemouth bass and smallmouth bass size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(14) Carter Caves State Park Lake, Carter County.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass: daily limit, three (3) fish; possession limit six (6) fish; size limit, fifteen (15) inches.

(c) A person shall not possess shad or use shad for bait.

(15) Cave Run Lake

(a) Largemouth bass: slot limit - a person may keep fish less than thirteen (13) inches or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.

(b) Smallmouth bass: size limit, eighteen (18) [~~sixteen (16)~~] inches.

(16) Cedar Creek Lake, Lincoln County.

(a) Largemouth bass: size limit, twenty (20) inches; daily limit: one (1) fish; possession limit, two (2) fish.

(b) [~~Crappie size limit, nine (9) inches, daily limit, fifteen (15) fish.~~

~~(c) Bluegill and Redear sunfish (shellcracker): daily limit, thirty (30) fish, singly or combined.~~

~~(d)~~] Channel catfish: size limit, twelve (12) inches; daily limit. four (4) fish.

(c) [~~(e)~~] A person shall not possess shad or use shad for bait.

(17) Chimney Top Creek; Wolfe County.

(a) Brown trout: size limit, sixteen (16) inches; daily limit, one (1); possession limit, two (2); [~~creel limit, one (1),~~] artificial bait only.

(18) Corinth Lake, Grant County.

(a) A person shall not possess shad or use shad for bait.

(b) Channel catfish: size limit, twelve (12) inches.

(19) Cumberland Lake.

(a) Largemouth: size limit, fifteen (15) inches.

(b) Smallmouth bass: size limit shall be eighteen (18) inches.

(c) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.

(d) Crappie: size limit, ten (10) inches.

(20) Cumberland River downstream from Barkley Lake Dam. Sauger: size limit, fourteen (14) inches.

(21) Cumberland River from Wolf Creek Dam downstream to the Kentucky-Tennessee state line and tributaries.

(a) Brown trout: size limit (no cull), twenty (20) inches; creel limit, one (1);

(b) Rainbow trout: slot limit (no cull), fifteen (15) to twenty (20) inches; creel limit five (5) fish, which shall not include more than one (1) fish greater than twenty (20) inches; and

(c) A trout permit shall be required to fish the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(d) Chumming shall not be permitted in the Cumberland River below Wolf Creek Dam to the Tennessee state line including the Hatchery Creek and all other tributaries upstream to the first riffle.

(22) Cyprus AMAX (currently owned by Addington Enterprises) and Robinson Forest Wildlife Management Areas, Breathitt, Knott, and Perry Counties. On impounded waters of the area:

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit three (3), possession limit, six (6).

(b) Sunfish: daily limit, fifteen (15), possession limit, thirty (30).

(c) Channel catfish: daily and possession limit, four (4)

(d) A person shall not fish:

1. Except during daylight hours; or

2. On Starfire Lake between January 1 and May 31.

(23) Dale Hollow Lake.

(a) Smallmouth bass: slot limit - a person shall release fish between sixteen (16) and twenty-one (21) inches. The daily limits shall not include more than one (1) fish less than sixteen (16) inches long and one (1) fish greater than twenty-one (21) inches long.

(b) Walleye and its hybrids: daily limit, five (5); size limit, sixteen (16) inches.

(c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.

(d) Rainbow trout and lake trout.

1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.

2. Daily limit, November 1 - March 31. two (2); size limit, twenty-two (22) inches.

(e) Largemouth bass: size limit, fifteen (15) inches;

(f) Black bass: aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.

(g) Crappie: size limit, ten (10) inches; daily limit, fifteen (15).

(24) Dewey Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(25) Dix River for two (2) miles downstream from Herrington Lake Dam. [~~(a)~~] A person shall not fish except with an artificial bait. [~~(b) Brown trout size limit, fifteen (15) inches.~~]

(26) Doe Run Lake, Kenton County

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).

(b) Channel catfish: daily limit, four (4); possession limit, eight (8).

(c) A person shall not possess shad or use shad for bait

(27) Dog Fork, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout

(28) [~~(27)~~] Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.

(29) [~~(28)~~] Elmer Davis Lake, Owen County

(a) Largemouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(30) [~~(29)~~] Fishtrap Lake. Largemouth bass or smallmouth bass: size limit, fifteen (15) inches

(31) [~~(30)~~] Golden Pond at the Visitors' Center at Land Between the Lakes. Channel catfish: daily limit, five (5) fish; possession limit, ten (10) fish; size limit, fifteen (15) inches.

(32) [~~(31)~~] General Butler State Park Lake, Carroll County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6)

(b) Channel catfish: daily limit, four (4); possession limit, (8).

(c) A person shall not possess shad or use shad for bait

(33) [~~(32)~~] Grayson Lake. Largemouth bass and smallmouth bass. size limit, fifteen (15) inches.

(34) [~~(33)~~] Greenbo Lake, Greenup County.

(a) A person shall not possess shad or use shad for bait.

(b) Bluegill and sunfish: daily and possession limit, fifteen (15) fish.

(35) [~~(34)~~] Green River Lake. Crappie: size limit, nine (9) inches.

(36) [~~(35)~~] Guist Creek Lake, Shelby County. Channel catfish: size limit twelve (12) inches.

(37) [~~(36)~~] Jernco Lake, Henry County

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(38) [~~(37)~~] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches; daily limit, twenty (20); possession limit, forty (40).

(c) Sauger: size limit, fourteen (14) inches

(39) [~~(38)~~] Kincaid Lake, Pendleton County [-] channel catfish: size limit, twelve (12) inches.

(40) Lake Blythe, Christian County Largemouth bass: slot limit - a person may keep fish less than twelve (12) inches, or greater than fifteen (15) inches, and shall release fish between twelve (12) and fifteen (15) inches

(41) Lake Malone, Muhlenburg and Logan County

(a) Largemouth bass slot limit - a person may keep fish less than twelve (12) inches, or greater than fifteen (15) inches, and

shall release fish between twelve (12) and fifteen (15) inches.

(b) Channel catfish: size limit, twelve (12) inches.

(42) Lake Mingo, Jessamine County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).

(b) Channel catfish: daily limit, four (4); possession limit, eight (8).

(c) A person shall not possess shad or use shad for bait.

(43) Lake Pollywog, Grant County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).

(b) Channel catfish: daily limit, four (4); possession limit, eight (8).

(c) A person shall not possess shad or use shad for bait.

(44) Lake Reba, Madison County.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit three (3).

(b) A person shall not possess shad or use shad for bait.

(45) Lake Shelby, Shelby County.

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).

(b) Channel catfish: daily limit, four (4); possession limit, eight (8).

(c) A person shall not possess shad or use shad for bait.

(46)[~~(39)~~] Laurel River Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) Smallmouth bass: size limit shall be eighteen (18) inches; daily limit, two (2), possession limit, four (4).

(c) Crappie. size limit, nine (9) inches; possession limit, thirty (30) fish.

(47) [~~(40)~~] Lebanon City Lake (Fagan Branch), Marion County. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.

(48) [~~(41)~~] Leary Lake, Grant County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: daily limit, three (3); possession limit, six (6).

(c) [~~Bluegill: daily limit, fifteen (15), possession limit, thirty (30).~~

~~(d)~~] Channel catfish: daily limit, four (4); possession limit, eight (8).

(49) [~~(42)~~] Lincoln Homestead Lake, Washington County.

(a) A person shall not fish except during daylight hours.

(b) Largemouth bass: daily limit, three (3); size limit, fifteen (15) inches.

(c) Channel catfish: daily limit, four (4); possession limit, eight (8).

(d) A person shall not possess shad or use shad for bait.

(50) [~~(43) Lake Malone.~~

~~(a) Largemouth bass - slot limit - a person shall release fish between twelve (12) and fifteen (15) inches.~~

~~(b) Channel catfish - size limit, twelve (12) inches.~~

~~(44)~~] Marion County Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(51) [~~(45) Mauzy Lake. Largemouth bass; no size limit.~~

~~(46)~~] McNeely Lake, Jefferson County. A person shall not possess shad or use shad for bait.

(52) [~~(47)~~] Mill Creek Lake, [~~in~~] Powell County.

(a) Largemouth bass, size limit, fifteen (15) inches; daily limit, three (3), possession limit, six (6) fish.

(b) A person shall not possess shad or use shad for bait.

(53) New Haven Optimist Lake, Nelson County.

(a) Largemouth bass: size limit, fifteen (15) inches, daily limit, three (3); possession limit, six (6).

(b) Channel catfish: daily limit, four (4); possession limit, eight (8).

(c) A person shall not possess shad or use shad for bait.

(54) [~~(48)~~] Nolin River Lake, whose impoundment extends up Bacon Creek to Highway 178 and to Wheelers Mill Road Bridge on the Nolin River.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(55) [~~(49)~~] Ohio River.

(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit shall be fifteen (15) inches long or longer.

(56) [~~(50)~~] Paint Creek between upper Highway 460 Bridge and Highway 40 Bridge, Johnson County. Trout: size limit, sixteen (16) inches; daily limit one (1) fish; artificial bait only.

(57) [~~(51)~~] Paintsville Lake.

(a) Largemouth bass: slot limit, twelve (12) to fifteen (15) inches.

(b) Smallmouth bass: size limit, eighteen (18) inches.

(58) [~~(52)~~] Parched Corn Creek, Wolfe County. A person shall:

(a) Not fish except with an artificial bait with a single hook;

(b) Release brook trout.

(59) [~~(53) Peabody Wildlife Management Area, for Goose Lake, Island Lake or South Lake.~~

~~(a) Largemouth bass. Size limit, fifteen (15) inches, daily limit, three (3), possession limit, six (6).~~

~~(b) Bluegill: daily and possession limit, fifteen (15).~~

~~(c) Redbreast sunfish: daily and possession limit, fifteen (15).~~

~~(d) Channel catfish: daily limit, four (4); possession limit, eight (8).~~

~~(e) Walleye: size limit, fifteen (15) inches; daily and possession limit, one (1).~~

~~(f) A person shall not:~~

~~1. Fish:~~

~~a. Except during daylight hours; and~~

~~b. From October 15 through March 15; or~~

~~2. Take frogs.~~

~~(54)~~] Pennyrile Lake, Christian County [~~.~~] largemouth bass, size limit, twelve (12) to fifteen (15) inch protective slot limit.

(60) [~~(55)~~] Pikeville City Lake, Pike County [~~.~~] Catch and release largemouth bass fishing (no harvest).

(61) [~~(56)~~] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 932. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(62) [~~(57) Lake Reba.~~

~~(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit for largemouth bass, three (3).~~

~~(b) A person shall not possess shad or use shad for bait.~~

~~(58)~~] Rough River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(63) [~~(59)~~] Shanty Hollow Lake, Warren County.

(a) Largemouth bass: size limit, fifteen (15) inches

(b) Channel catfish: size limit, twelve (12) inches.

(c) A person shall not possess shad or use shad for bait.

(64) [~~(60)~~] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall:

(a) Not fish except with an artificial bait with a single hook; and

(b) Release brook trout.

(65)[~~(61)~~] Sportsman's Lakes, Franklin County.

(a) A person shall not possess shad or use shad for bait.

(b) Upper Sportsman's Lake

1. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches; daily limit, three (3), possession limit, six (6); and

2. Channel catfish: daily limit, four (4); possession limit, eight (8).

(c) Lower Sportsman's Lake:

1. A person thirteen (13) years or older shall not fish; and

2. Daily limit, three (3) fish of any species.

(66) [~~(62)~~] Spurlington Lake, Taylor County. A person shall not possess shad or use shad for bait.

(67) [~~(63)~~] Sympson Lake, Nelson County [~~.~~] largemouth bass: size limit, fifteen (15) inches.

(68) [~~(64)~~] Taylorsville Lake, including the impounded waters of the lake to Dry Dock Road Bridge on the Salt River.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: daily limit, fifteen (15); possession limit, thirty (30); size limit [~~limits~~], nine (9) inches.

(69) [~~(65)~~] Taylorsville Lake WMA ponds, Spencer County (as designated).

(a) Largemouth bass: size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6) [~~one (1)~~].

(b) Channel catfish: daily limit, four (4) fish; possession limit, eight (8).

(70) [~~(66)~~] Tennessee River downstream from Kentucky Lake Dam. Sauger: size limit, fourteen (14) inches.

(71) [~~(67)~~] Wood Creek Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth and smallmouth bass: size limit, fifteen (15) inches.

(72) [~~(68)~~] Yatesville Lake: largemouth bass and smallmouth bass; size limit, fifteen (15) inches.

Section 5. Seasonal Catch and Release for Trout. (1) There shall be seasonal catch and release for trout season from October 1 - March 31.

(2) A person shall use artificial bait and release trout.

(3) The following streams shall be open to the seasonal catch and release for trout season:

(a) Bark Camp Creek in Whitley County;

(b) Beaver Creek from Highway 90 Bridge upstream to Highway 200 Bridge in Wayne County;

(c) Big Bone Creek within Big Bone Lick State Park in Boone County;

(d) Cane Creek in Laurel County;

(e) Casey Creek in Trigg County;

(f) Clear Creek from mouth upstream to 190 Bridge in Bell County;

(g) East Fork Clarks River from Bee Creek upstream to Old Salem Road Bridge in Calloway County;

(h) East Fork of Indian Creek in Menifee County;

(i) Elk Spring Creek in Wayne County;

(j) Left Fork of Beaver Creek in Floyd County from Highway 122 Bridge upstream to the headwater;

(k) Lick Creek in Simpson County;

(l) Middle Fork Red River in Natural Bridge State Park in Powell County;

(m) Otter Creek in Meade County on the Fort Knox Reservation and Otter Creek Park; and

(n) Rock Creek from the Bell Farm Bridge to the Tennessee state line in McCreary County.

(4) The seasonal catch and release for trout season for Swift Camp Creek in Wolf County shall be October 1 through May 31.

Section 6. Special Limits for Fishing Events. (1) The commissioner may establish special limits for fishing events including:

(a) Size limits for selected species;

(b) Creel limits for selected species;

(c) Eligible participants; and

(d) Dates and times of special limits.

(2) Event sponsors shall post signs informing anglers of the special limits a minimum of twenty-four (24) hours before the event.

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: March 8, 2007
FILED WITH LRC: July 12, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2007, at 12 p.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the size limits of and daily possession limits for sport fish that can be taken from Kentucky waters.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to effectively manage the fish populations of Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations necessary to establish fishing guidelines to protect fish species from overharvest. This administrative regulation is necessary to establish size limits, daily catch limits, and field possession limits for fishing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will carry out the purposes of KRS 150.025 by limiting the number and size of fish that may be taken from Kentucky waters. This will ensure that Kentucky's valuable sport fish populations are maintained at their highest possible levels.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment includes the following changes: (1) more restrictive creel and size limits for largemouth bass and channel catfish on a series of "urban" lakes, (2) elimination and standardization of creel and size limits for several lakes, (3) reduction in the daily creel and possession limit for smallmouth bass at Laurel River Lake, (4) reduction in the daily creel and possession limit for crappie at Kentucky and Barkley lakes, and (5) expansion of the prohibition of possessing shad on additional lakes.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary for the Department of Fish and Wildlife Resources to effectively manage the sport fish populations and reduce the potential for overharvest. Harvest restrictions (fish size and daily creel limits) are the most effective management tool to maintain quality sport fishing opportunities throughout the Commonwealth. This amendment is also necessary to prohibit the use or possession of shad (where they are not already present) at additional small lakes. This action will help manage sunfish and largemouth bass populations at these small lakes.

(c) How the amendment conforms to the content of the authorizing statutes. See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation. All persons who fish the waters of the Commonwealth may be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Several of these proposed changes will subject anglers to more restrictive harvest requirements. Some of the cleanup and standardization changes will actually liberalize harvest restrictions. The prohibition of shad on three new lakes will limit a live bait option for catfish anglers.

(b) In complying with this administrative regulation or amend-

ment, how much will it cost each of the entities identified in question (3): There will be no additional costs as a result of complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):
More restrictive size and creel limits will better protect the sport fish populations and ultimately create more sport fishing opportunities. The cleanup and standardization component will simplify the regulations and the ability for anglers to understand the various fishing requirements in Kentucky. The prohibition of shad will hopefully eliminate the establishment of this species in these lakes and maintain a better quality panfish fishery.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in no initial change in cost to the Kentucky Department of Fish and Wildlife Resources to administer.

(b) On a continuing basis: There will be no additional cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not used because all anglers utilizing these water bodies will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150.025 authorizes the Department of Fish and Wildlife Resources to promulgate administrative regulations necessary to establish fishing guidelines that are necessary to protect fish from being over harvested.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated by this administrative regulation for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? Fishing has an annual economic impact of approximately $1.2 billion in Kentucky.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

COMMERCE CABINET
Department of Fish and Wildlife Resources
(Amendment)

301 KAR 1:410. Taking of fish by other than traditional fishing methods.

RELATES TO: KRS 150.010, 150.025(1), 150.120, 150.170, 150.175, 150.235, 150.360, 150.370, 150.440, 150.445, 150.620, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.440, 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to establish methods of taking fish. This administrative regulation establishes the procedures for taking sport and commercial fish by other than traditional fishing methods such as: snagging; underwater spearing, and "scuba diving"; sport fishing trot lines, jugging and setlines; the taking of rough fish from backwaters; gigging, grabbing or snagging; and bow fishing.

Section 1. Definitions. (1) "Bow and arrow" means a:

(a) Longbow;

(b) Compound bow; or

(c) Crossbow.

(2) "Cull" means to replace a fish in your daily creel limit with another fish of the same species.

(3) "Jugging" is defined in KRS 150.010(15).

(4) "Setline" is defined in KRS 150.010(34).

(5) "Snagging" is defined in KRS 150.010 (35).

(6) "Sport fisherman" is defined as a person holding a valid resident or nonresident fishing license and include those persons who are license exempt as specified in KRS 150.170.

(7) "Sport Fishing Trotlines" is defined in KRS 150.010(36).

Section 2. Skin and Scuba Diving and Underwater Spear Fishing. (1) Skin or scuba diving is prohibited in all lakes owned by the Department of Fish and Wildlife Resources, except as stated in subsections (2) and (3) of this administrative regulation.

(2) Skin or scuba diving may be permitted in salvage operations upon receipt of written permission by the diver from the Division of Law Enforcement or the local Conservation Officer assigned to the specific body of water in which the diving is to take place.

(3) Skin or scuba diving is permitted anytime without prior authorization in cases of emergency involving the possibility of saving human life or in the recovery of a victim of drowning.

(4) Underwater spearing of fish with hand held spear or mechanically-propelled spear is legal throughout the year in lakes 1,000 acres in size or larger as measured at normal or summer pool level.

(a) A participant in this type of sport shall be submerged in the water in which spearing takes place.

(b) Only rough fish shall be taken and an appropriate fishing license is required.

(c) The daily limit is fifteen (15) rough fish of which not more than five (5) shall be catfish (aggregate).

Section 3. Sport Fishing Trotlines, Jugging, and Setlines. (1) Tagging and Checking.

(a) Each sport fishing trotline, jug line or setline shall be permanently labeled or tagged with the name and address of the person using it.

(b)1. All sport fishing trotlines, jug lines, and setlines shall be baited, checked and all fish removed at least once every twenty-four (24) hours.

2. The fisherman shall remove these devices from the water, from the bank, or from tree limbs when he or she has finished fishing.

3. Trotlines, setlines, or jug lines that are not properly labeled, remain unchecked, or unbaited for over twenty-four (24) hours may

be confiscated.

(2) Fishing requirements.

(a) An individual sport fisherman shall not use more than:

1. Two (2) sport fishing trotlines; or

2. Twenty-five (25) setlines; or

3. Fifty (50) jug lines.

(b) A boat containing multiple sport fishermen shall not use more than fifty (50) jug lines per boat.

(c) Sport fishing trotlines shall be set at least three (3) feet below the water's surface and contain no more than fifty (50) single or multibarbed hooks placed no closer together than eighteen (18) inches.

(d) [~~(c)~~] A jug line or setline shall not have more than one (1) single or multibarbed hook.

(e) [~~(d)~~] An appropriate fishing license is required.

(3) Closed waters. A sport fishing trotline, jugs, or setlines shall not be used in the following waters:

(a) In the Tennessee River within 700 yards of Kentucky Dam.

(b) In the Cumberland River below Barkley Dam to the Highway 62 bridge.

(c) In any lake less than 500 surface acres owned or managed by the department, except those specifically listed in subsection (3)(e) of this section.

(d) In the following areas of the Ohio River.

1. Smithland Dam downstream to a line perpendicular the end of the outer lock wall.

2. J. T. Meyers downstream to a line perpendicular to the end of the outer lock wall and that portion of the split channel around the southern part of Wabash Island from the fixed weir dam to the first dike.

3. Newburgh Dam downstream to a line perpendicular to the end of the outer lock wall.

4. Cannelton Dam downstream to a line perpendicular to the end of the outer lock wall.

5. McAlpine Dam downstream to the K&I railroad bridge.

6. Markland Dam downstream to a line perpendicular to the end of the outer lock wall.

7. Meldahl Dam downstream to a line perpendicular to the end of the outer lock wall.

8. Greenup Dam downstream to a line perpendicular to the end of the outer lock wall.

(e) A sport fishing trotline, jugs, or setlines shall not be permitted in lakes under 500 surface acres owned or managed by the department, except the following:

1. Ballard Wildlife Management Area Lakes, Ballard County.

2. Peal Wildlife Management Area Lakes, Ballard County.

3. Swan Lakes Wildlife Management Area Lakes, Ballard County.

Section 4. Rough Fish from Backwaters. (1) The Commissioner of the Department of Fish and Wildlife Resources may designate all wildlife and boating officers and other employees of the Department of Fish and Wildlife Resources to establish and supervise areas for the taking of all types of rough fish as described in 301 KAR 1:060 from the backwaters, or overflow areas of streams, rivers and reservoirs as long as the backwater, or overflow area is connected with the stream or reservoir. When the backwater is no longer connected with the stream or reservoir the landowner may, under the supervision of the wildlife and boating officer, direct the taking of rough fish in accordance with this administrative regulation. The wildlife and boating officer or other designated officials are authorized to determine the exact dates and time when the taking of these rough fish shall commence and cease.

(2) Fish may be taken in the above-described areas by any method except by the use of poison, electrical devices or firearms. If nets and seines are used, they shall be appropriately tagged and the user shall have an appropriate commercial fishing license.

(3) A wildlife and boating officer or designated official shall not permit the taking of any fish from any slough, or backwater, or overflow area without first having the permission of the landowner on whose land the water has overflowed.

(4) All persons engaged in this type of fishing shall have a fishing license.

Section 5. Gigging, Grabbing or Snagging, Tickling, and Noodling. (1) Fish may be taken by snagging using a single hook or one (1) treble hook except as provided in subsection (2) of this section.

(2) In the Green River and its tributaries and the Rolling Fork River and its tributaries, five (5) hooks, either single or treble hooks, may be used.

(3) Methods of gigging and snagging. A person may gig or snag from the stream or lake banks, but shall not snag or gig from a boat or platform, except that gigging is permitted from a boat in any lake with a surface acreage of 500 acres or larger during the daylight hours.

(4) Seasons. Gigging and snagging are permitted February 1 through May 10 except as provided in subsection (8) of this section. Persons may gig rough fish through the ice if the surface is frozen thick enough to stand on and the gigger shall gig while supported by the ice.

(5) Creel limits.

(a) The statewide daily creel limit for rough fish taken by gigging and snagging in areas open, except in the Tennessee River below Kentucky Dam and in the Cumberland River below Barkley Dam as provided in subsections (7) and (8) of this section, is unlimited with the exception that only two (2) paddlefish may be taken daily statewide. All snagged paddlefish, in all areas open to gigging and snagging, shall be taken into immediate possession and shall not be released or culled. Once the daily limit of paddlefish has been reached, all snagging shall cease. Harvest of sport fish by gigging and snagging is prohibited statewide except as provided for in subsection (8) of this section.

(b) Daily creel limits in the Tennessee River below Kentucky Dam open to snagging and in the Cumberland River below Barkley Dam open to both gigging and snagging shall be eight (8) fish, of which no more than eight (8) may be paddlefish. Harvest of sport fish is permitted by snagging only in the Tennessee River as provided by subsection (8) of this section.

(6) Areas where gigging and snagging are permitted. Gigging or snagging for rough fish is permitted night and day in lakes and streams, except where specifically prohibited in subsections (3), (4), (7), and (8) of this section.

(7) Gigging and snagging is specifically prohibited in the following lakes, streams and their tributaries, except as provided in subsection (8) of this section.

(a) The Cumberland River below Wolf Creek Dam downstream to the Tennessee line Including Hatchery Creek, and in the Cumberland River in the area below Barkley Dam downstream to US 62 bridge.

(b) The Middle Fork of the Kentucky River, from Buckhorn Lake Dam downstream to the Breathitt County line in Perry County.

(c) The Rough River, below Rough River Lake Dam Downstream to Highway 54 Bridge in Breckinridge and Grayson Counties.

(d) Cave Run Lake.

(e) Those tributaries to the Cumberland River below Wolf Creek Dam downstream to the Tennessee line shall be open to gigging and snagging, in season, except that portion of each tributary which is within one-half (1/2) mile of its junction with the Cumberland River.

(f) Within 200 yards of any dam on any stream, except as specified in subsection (8) pertaining to the Tennessee River below Kentucky Dam. [~~(g) Gigging and snagging are not permitted in streams stocked with trout, except that gigging and snagging shall be permitted in the mainstem of Station Camp Creek in Estill and Jackson Counties. The prohibited streams stocked with trout include statewide streams, national forest streams, seasonal catch and release trout streams and the Fort Campbell and Fort Knox military reservations as defined in the List of Streams Stocked with Trout that is incorporated by reference in this administrative regulation.~~]

(8) Snagging shall be permitted in the Tennessee River below Kentucky Dam.

(a) Season and area.

1. Snagging is permitted in the Tennessee River between the Kentucky Lake dam and the new US 62 Bridge twenty-four (24) hours per day from January 1 through May 31.

2. From June 1 through December 31, snagging is only permitted from sunset to sunrise (local time) between the Kentucky Lake dam and the US 62 Bridge.

3. Snagging is not permitted year round in the Tennessee River from the new US 62 Bridge to the I-24 Bridge.

4. Snagging is permitted year round in the Tennessee River from the I-24 Bridge to its confluence with the Ohio River.

5. Snagging is not permitted under the US 62 bridge, the P&L Railroad bridge, or from the fishing piers located below the US 62 Bridge.

(b) Equipment.

1. A snagging rod shall not exceed a length of seven and one-half (7 1/2) feet including the handle.

2. The rod shall be equipped with line, guides, and a reel.

3 No more than one (1) single or treble hook may be attached to the line.

(c) Creel limit.

1. All fish snagged shall be taken into immediate possession (no cull), except for shad or herring.

2. The daily creel limit shall be an aggregate of eight (8) fish of which no more than eight (8) fish can be paddlefish and;

3. Snagging shall cease once a daily limit for any sport fish is obtained.

(9) All game fish caught by gigging or snagging, except those taken as permitted in subsection (8)(c) of this section, in the Tennessee River below Kentucky Dam shall be returned to the water immediately, regardless of condition.

(10)(a) Tickling and noodling (hand grabbing) season for rough fish shall be June 1 to August 31 during daylight hours.

(b) Tickling and noodling shall be permitted in all waters.

(c) The daily creel limit for tickling and noodling shall be fifteen (15) fish of which not more that five (5) shall be catfish (aggregate).

Section 6. Bow Fishing. (1) A person shall not take with a bow and arrow:

(a) Sport fish, as listed in 301 KAR 1:060, Section 1.

(b) More than five (5) catfish (aggregate) and two (2) paddlefish daily.

(2) Bow fishing is open statewide; except as noted below where bow fishing is prohibited:

1. Cumberland River below Wolf Creek Dam downstream to the Tennessee line including Hatchery Creek, and all tributaries within one-half (1/2) mile of their junction with the Cumberland River within this area. ~~[In streams stocked with trout. These include statewide streams, national forest streams, seasonal catch and release trout streams and the Fort Campbell and Fort Know military reservations that are in the List of Streams Stocked with Trout that is incorporated by reference in this administrative regulation; and]~~

2. From a boat in restricted areas below navigation, power generating, or flood control dams.

~~[Section 7. Incorporation by Reference. (1) The List of Streams Stocked with Trout, 2007 is incorporated by reference.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4.30 p.m.]~~

MARK S. CRAMER, Deputy Commissioner
For DR. JONATHAN GASSETT, Commissioner
GEORGE WARD, Secretary
APPROVED BY AGENCY: June 8, 2007
FILED WITH LRC: July 12, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2007, at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation by August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Rose Mack, Kentucky Department of Fish and Wildlife Resources, 1 Sportsman's Lane, Frankfort, Kentucky 40601, phone (502) 564-7109, ext. 441, fax (502) 564-0506.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the procedures for taking fish by non-traditional fishing methods.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the methods that can be used, seasons, limits, and areas open to fishing by the non-traditional fishing methods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to establish methods for taking fish, regulate creel and possession limits, and regulate or restrict the locations where taking is permitted.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will perform the purposes of KRS 150.025 by describing the methods by which fish may be taken by other than traditional (hook and line) methods. This will ensure that Kentucky's valuable sport fish populations are maintained at their highest possible levels for the enjoyment of all angling groups.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation. Gigging, snagging, and bow fishing will now be allowed in all trout streams, except as noted where it is prohibited. Gigging, snagging, and bow fishing are still prohibited in the Cumberland River below Wolf Creek dam downstream to the Tennessee state line, including Hatchery Creek.

(b) The necessity of the amendment to this administrative regulation: This amendment liberalizes areas where anglers can gig, snag, and bow fish. Previously, these fishing methods were prohibited in the entire length of streams where trout are stocked. Sections of streams were needlessly closed to these activities; therefore, this amendment will increase fishing opportunity throughout the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: It is estimated that about 24,000 resident anglers gig fish, 13,000 resident anglers bow fish, and 28,000 resident anglers snag fish.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Anglers wanting to gig, snag, and bow fish will now be allowed to do so on trout streams throughout the Commonwealth, except where specifically prohibited. These anglers will now be allowed to participate in more water bodies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs incurred to anyone as a result of complying with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

As a result of compliance, the Kentucky Department of Fish and Wildlife Resources will allow persons wanting to gig, snag, or bow fish access, unless specifically prohibited, to trout streams throughout the Commonwealth. There will be an increase in fishing opportunities by removing this restriction in trout streams.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no cost to the agency as a result of implementing this administrative regulation change

(b) On a continuing basis: There will be no additional cost on a continuing basis

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the state Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will not be necessary to increase any other fees or to increase funding to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees will be established.

(9) TIERING: Is tiering applied? Tiering was not used because all anglers choosing to gig, snag, and bow fish will be treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school distncts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Department of Fish and Wildlife Resources Divisions of Fisheries and Law Enforcement will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 150 025 authorizes the Department of Fish and Wildlife Resources to establish methods of taking fish.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. Expenditures and revenues for the Kentucky Department of Fish and Wildlife Resources will not change. The current budget of the Department of Fish and Wildlife Resources funds the administrative cost while the Division of Law Enforcement already oversees the enforcement of administrative regulations.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue will be generated for state or local government for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue will be generated for state or local government for subsequent years.

(c) How much will it cost to administer this program for the first year? There will be no additional costs incurred for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

DEPARTMENT OF AGRICULTURE
Livestock Sanitation
(Amendment)

302 KAR 20:010. Definitions for 302 KAR Chapter 20.

RELATES TO. KRS Chapters 246, 257
STATUTORY AUTHORITY: KRS 257 020, 257.030
NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.030(4) authorizes the Board of Agriculture to promulgate administrative regulations necessary to administer KRS Chapter 257. This administrative regulation establishes definitions for 302 KAR Chapter 20, which implements KRS Chapter 257.

Section 1. Definitions. (1) "Accredited veterinarian" means a veterinarian approved in accordance with the provisions of 9 C F R. 1 Part 161.

(2) "Animal" means any species of livestock, poultry, menagerie animals, exotic animals, feral, wild, or captive animals, pet birds, canine, feline, and ferret

(3) "Animal Identification Number" or "AIN" means a unique, individual fifteen (15) character identification number meeting the standard set by the USDA APHIS VS.

(4) "Approved Kentucky Horse Sale" means a regularly-scheduled public equine sale that does not require certification of EIA testing and preconsignment and that meets the requirements of 302 KAR 20:260.

(5) [~~"Approved certificate of veterinary inspection" means an official certificate of veterinary inspection approved by the chief livestock health official of the state of origin.~~

~~(2)~~] "Area veterinarian in charge" means the federal veterinarian in charge of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

(6) [~~(3)~~] "Assembled cattle" means animals without a common owner, consignor, or herd of origin brought together during transportation to market and commingled in a common enclosure

(7) [~~(4)~~] "Board" is defined by KRS 257.010(1).

(8) "Captive wild swine" means swine that has a phenotype not significantly affected by human selection but that is captive or otherwise lives under supervision or control of humans.

(9) "Certificate of Veterinary Inspection" or "CVI" means an official document approved by the chief animal health official of the state of origin or by USDA APHIS VS for verification of veterinary inspection that is issued by a licensed and accredited veterinarian.

(10) "Certificate of Veterinary Inspection Reconsignment Form" means an official form approved by the state veterinarian of the state of origin that is attached to a valid CVI for the movement of animals from a sale to the buyer's premises

(11) [~~(5)~~] "Chief animal [~~livestock~~] health official" means State Veterinarian, Department of Agriculture, or his authorized representative.

(12) "Circus animal" means a trained animal used in an entertainment show.

(13) "Commingled" means animals from one (1) premises that are mixed or assembled with animals from any other premises

(14) [~~(6)~~] "Commissioner" is defined by KRS 257.010(2)

(15) [~~(7)~~] "Communicable disease" means a disease transmissible either directly or indirectly[~~:~~

~~(a) A communicable disease as defined by KRS 257.010(3), or~~

~~(b) Coccidiosis, anaplasmosis, encephalomelitis, salmonellosis, paratuberculosis or Johne's disease, pseudorabies, velogenic viscerotrophic Newcastle disease, and chronic wasting disease or CWD~~].

(16) [~~(8)~~] "Concentration" or "assembly point" means any place where livestock or poultry [~~animals~~] are assembled or commingled[~~, moved, gathered, combined, collected, or brought~~] together by any person using any method or vehicle for sale, resale, or barter.

(17) [~~(9)~~] "Cull pig" means a pig that does not pass a veterinary inspection for health.

(18) [~~(10)~~] "Department" is defined by KRS 246.010(1).

(19) "Electronic Identification Device" or "EID" means an AIN that is coded electronically within a device.

(20) "Equine Infectious Anemia" or "EIA" test certificate means

a federal or state-approved form for recording the identification of the animal, the test results, and the testing laboratory.

(21) "Equine Interstate Event Permit" means an official document issued by a State Veterinarian, Chief Animal Health Official, or an authorized representative of a state participating in a mutual agreement with Kentucky that meets specific requirements for CVI information and EIA testing.

(22) "Exhibition" means a fair, show, exposition, rodeo, competition, or trail ride.

(23) "Exotic" means any animal or disease that is not known to exist naturally in Kentucky.

(24) "Feral" animal means an animal that was previously domestic that now lives without supervision, control by, or dependence on humans.

(25) [~~(11) "Farm of origin" means a farm where livestock were born and remained prior to movement or where the livestock have remained for not less than six (6) months immediately prior to movement, and which has not been used in the past six (6) months to assemble, buy, or sell livestock brought in from other sources. For swine, the applicable time period prior to movement shall be ninety (90) days.~~

~~(12)~~] "Feeder cattle" means steers of any breed, spayed heifers, or open heifers of the beef breed, under eighteen (18) months of age, which are intended for slaughter after reaching the desired weight and grade.

(26) [~~(13)~~] "Garbage" means all animal and vegetable waste resulting from the handling, preparation, consuming, and cooking of food; unconsumed food in all public and private establishments and residences; and the offal and carcasses of dead animals, poultry, and fish or parts thereof.

(27) "Graded" means grouping of animals for sale purposes.

(28) "Group/Lot Identifier Number" or "GIN" means a unique identifier number for a group or lot of animals moved through the production chain as a group and meeting the standards set by the USDA APHIS VS.

(29) [~~(14)~~] "Health certificate" or "health paper" [~~"certificate of veterinary inspection"~~] means a CVI [~~legible record covering the requirements of the state of destination, on an official form of a standard size from the state of origin, or an equivalent form of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, that is prepared and issued by a licensed, accredited veterinarian~~].

(30) [~~(15)~~] "Infectious" or "contagious disease" means any disease condition that can be transmitted from one (1) animal to another.

(31) [~~(16)~~] "Interstate" means movement into or through any other state.

(32) [~~(17)~~] "Intrastate" means movement solely within the boundaries of the Commonwealth of Kentucky.

(33) [~~(18)~~] "Licensed[~~, accredited~~] veterinarian" means a graduate veterinarian [~~who is~~] approved by a state licensing [~~examining~~] board[~~, the federal government, and the Commonwealth of Kentucky~~].

(34) [~~(19)~~] "Livestock" means domestic animals of the following species:

(a) Bovine;

(b) Camelid;

(c) Caprine;

(d) Cervid, whose regulatory requirements are under KRS Chapters 150 and 246, that are privately owned and raised in a confined area for breeding stock, food, fiber, and other products;

(e) Equine;

(f) Ovine;

(g) Porcine [~~is defined by KRS 257.010(8)~~].

(35) "Menagerie animal" means a domestic or nondomestic animal kept individually or as part of a collection primarily for purposes of exhibition or competition.

(36) [~~(20) "Move" or~~] "Movement" means the act of moving, shipping, [~~or~~] transporting, delivering, receiving, or collecting animals [~~livestock~~] by any means, method, or vehicle by any person for any purpose[~~, or delivering, receiving, or collecting livestock by any means, method, or vehicle by land, water, or air for sale, resale, or barter by any person~~].

(37) [~~(21)~~] "Official brucellosis vaccinate" means a female bovine vaccinated with an approved Brucella vaccine as specified in the vaccination protocol set forth by 9 C.F.R. Part 78 [~~the State Veterinarian in 302 KAR 20:055~~].

(38) "National Poultry Improvement Plan" or "NPIP" means a plan as designated in 9 C.F.R. Part 145.

(39) "Office of State Veterinarian" or "OSV" means that section of the Kentucky Department of Agriculture that implements the provisions of 302 KAR Chapter 20.

(40) [~~(22)~~] "Owner" or "operator" means a person, firm, corporation, or company responsible for the operation of any stockyard, sale, farm, or ranch.

(41) [~~(23)~~] "Person" means any individual, firm, association, partnership, or corporation.

(42) "Pet bird" means any member of avian species other than poultry that is kept in confinement.

(43) "Poultry" means chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys per C.F.R. Part 82.

(44) [~~(24)~~] "Premises" is defined by KRS 257.010(13) [~~(11)~~].

(45) "Premises Identification Number" or "PIN" means a unique identifier approved by the department that identifies a location where livestock or poultry are held or commingled.

(46) "Psittacine" means of or belonging to the family Psittacidae, which includes parrots, macaws, and parakeets.

(47) [~~(25)~~] "Recognized slaughtering center" means a slaughtering establishment approved in accordance with 21 U.S.C. 601-695 and 9 C.F.R. Part 77[~~.5~~] where slaughtering facilities are provided and to which animals are regularly shipped and slaughtered.

(48) "Service animal" means an animal with special training to assist persons with vision, hearing, or other physical or mental disability.

(49) [~~(26)~~] "State-federal approved stockyard" means a stockyard which complies with 9 C.F.R. Part 71 [~~71.1, 71.20,~~] and 302 KAR 20:070 for specific movements of livestock and which has been approved by the chief animal [~~livestock~~] health official and [~~federal~~] area veterinarian in charge.

(50) "State Veterinarian" means the chief animal health official of the Kentucky Department of Agriculture or an authorized representative.

(51) [~~(27)~~] "Stockyards" is defined by KRS 261.200(4) [~~(5)~~].

(52) "Telemarketing" means an electronic form of marketing animals regulated by the Kentucky Department of Agriculture, Office of Agriculture Marketing and Product Promotion.

(53) "Wild" means an animal that has a phenotype unaffected by human selection and lives independent of direct human supervision or control.

(54) "USDA APHIS VS" means the United States Department of Agriculture Animal Plant Health Inspection Service Veterinary Services.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: July 10, 2007

FILED WITH LRC: July 10, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2007, at 10 ET, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 2007, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Robert Stout or Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601, phone (502) 564-3956, fax (502) 564-7852.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Stout or Sue Billings

(1) Provide a brief summary of:

(a) What this administrative regulation does: Provide definitions for Kentucky Administrative Regulation 302 KAR 20.

(b) The necessity of this administrative regulation: Provides definitions for terminology used in the sections of 302 KAR 20.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.030 authorizes the department to promulgate regulations necessary for administration and enforcement of KRS 257.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: Adds and defines terminology.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: Provide definition of terms added to regulation by amendment.

(b) The necessity of the amendment to this administrative regulation: Adds and defines terms used in 302 KAR Chapter 20.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 257.030 authorizes the department to promulgate regulations necessary for administration and enforcement of 302 KAR Chapter 20.

(d) How the amendment will assist in the effective administration of the statutes: Will define terms used to administer and enforce statutes.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All livestock producers and exhibitors, livestock markets, fairs, and animal exhibition venues are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions required for definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): $0

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Will define terms used in 302 KAR Chapter 20.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation: $0

(a) Initially: $0

(b) On a continuing basis:$0

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: N/A

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees required.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No

(9) TIERING: Is tiering applied? Tiering is not applied as all entities are affected the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation

Revenues (+/-).

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE
Livestock Sanitation
(Amendment)

302 KAR 20:020. General requirements.

RELATES TO: KRS Chapters 246, 257

STATUTORY AUTHORITY: KRS Chapter 257, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: Clarify general health requirements and provisions concerning interstate and intrastate movement of [~~all classes of~~] animals.

Section 1. General Requirements and Provisions (1) Premises of origin information: premises address, including road name and number, city, and state or a PIN shall be provided for the premises from which the movement originated for all animals upon movement to a state-federal approved stockyard, exhibition and assembly point, or upon change of ownership.

(2) Official identifier. Official Individual or Group/Lot Animal Identification consists of a set of alphanumeric characters or physical characteristics which are uniquely associated with an individual animal or group/lot of animals.

(a) Official USDA animal tag or EID;

(b) An official breed association tattoo, tag, or EID;

(c) Breed registration brand;

(d) A written or graphic description of an equine animal which uniquely identifies that equine animal and includes all of the following:

1. Breed,

2. Age;

3. Color;

4. Distinctive Markings; and

5. Gender and sexual status.

(e) An EID if all the following apply:

1. The EID uniquely identifies the animal;

2. The EID is attached to or implanted in the animal;

3. The person having custody of the animal has an EID reader that can read the EID or the facility has a reader;

4. EID is registered to a PIN or to a person.

(f) A leg or wing band number that uniquely identifies poultry, ratite, or other avian species.

(g) Breed registry ear notches on swine.

(3) Certificate of veterinary inspection.

(a) A CVI or appropriate permit shall be required for movement or exhibition of all animal(s), except as specified in each species section.

(b) A CVI shall be valid for thirty (30) days after date of inspection and issuance except as provided in 302 KAR 20:065.

(c) A CVI shall contain the following information:

1. Identification of animal(s) recorded on the certificate. Official individual identification is required except where group/lot numbers are approved by USDA or the OSV;

2. The species, breed, sex, and age of the animal;

3. The name and address of the owner/agent shipping the animal and the location from which the animal is shipped;

4. The name and address of the person receiving the animal and the location at which the animal will be received;

5. Other information that may be required under this regulation for the entry or movement of the animal includes NPIP number, Scrapie flock number, tuberculosis herd accreditation or brucellosis certification numbers, and the last test date;

6. The following statement or one substantially similar: "I certify as an accredited veterinarian that the above described animals have been inspected by me and that they are not showing signs of infection and/or communicable disease (except where noted). The vaccinations and results of tests are as indicated on the certificate. To the best of my knowledge, the animals listed on this certificate meet the state of destination and federal interstate requirements "; and

7. For movements requiring vaccination, the CVI stipulating vaccination shall include:

a. Date of vaccination;

b. Name of vaccine;

c. Serial number of vaccine; and

d. Expiration date of the vaccine used

(d) Distribution of written CVIs by the accredited veterinarian;

1. The first page shall be submitted to the OSV within seven (7) days of the date it is written.

2. The second page shall accompany the animal being moved

3. The third page shall be sent to the state of destination within seven (7) days of the date it is written.

4. The fourth page shall be retained by the issuing veterinarian

(4) Certificate of Veterinary Inspection Reconsignment Form: sale animals purchased at a Kentucky sale venue may move to the buyer's destination on a CVI reconsignment form attached to the original CVI for the sale if the following conditions are met:

(a) The state of destination agrees to accept a reconsigned CVI;

(b) The animal will reach its final destination within thirty (30) days of the date on the original CVI;

(c) All requirements of the state of destinatron have been met and test results included on the CVI; and

(d) The reconsigning veterinarian shall submit the CVI reconsignment form and a copy of the original CVI to the state of destination and to the OSV within seven (7) days

(5) Equine Interstate Event Permit.

(a) The Equine Interstate Event Permit shall be accepted from states in a participating agreement with Kentucky.

(b) The Equine Interstate Event Permit shall be valid for six (6) months from date of issue for out of state equine.

(c) The Equine Interstate Event Permit shall be valid for one (1) year from date of issue for intrastate movement for exhibition or until the expiration of the EIA test.

(d) The equine shall have a permanent individual animal identification in the form of a unique identifier lip tattoo, brand, electronic implant, or digital photograph, which must be incorporated into the issued permit.

(e) An accurate event itinerary log shall be in the owner/transporter's possession documenting each equine movement during period of permit

(6) Entry permit

(a) A permit, when required, shall be obtained from the OSV and shall include:

1. Number of animals;

2. Description of the animals: species/breed, sex, and age and weight when requested;

3. Name of consignor/farm or other place of origin or PIN;

4. Name of consignee/farm or other place of destination or PIN;

5. Arrival date of the animal(s); and

6. Any special restrictions relating to the movement of the animal(s)

(b) A permit for movement requiring CVI shall only be issued to an accredited veterinarian.

(7) Owner and shipper's declaration shall be accepted only for imported animals originating directly from the farm of origin and proceeding directly to a recognized slaughtering center for immediate slaughter or to a state-federal approved stockyard for reconsignment to immediate slaughter with no diversion whatever enroute and shall include all of the information in subsection (6)(a) of this section.

(8) No animal(s) that is known to be affected with or exposed to any communicable disease or that originated from a quarantined area or quarantined herd shall enter Kentucky or be transported intrastate within Kentucky without permission of the OSV.

(9) An animal entering or moving that is not in compliance with existing administrative regulations and statutes shall be subject to expulsion or isolation and quarantine pending compliance.

(10) All required tests shall be conducted at no expense to the Commonwealth of Kentucky.

(11) All required laboratory tests shall be conducted in a state-federal approved laboratory.

(12) Required testing or vaccination

(a) All required tests and vaccinations, including brucellosis and tuberculosis, shall be performed by one (1) of the following:

1. A licensed and accredited veterinarian;

2. An authorized representative of the State Veterinarian; or

3. An authorized representative of the federal government

(b) All required vaccinations, branding, testing, individual animal identification, and other animal health procedures shall be performed using standards approved by the OSV or federal regulation.

(13) The owner or consignor shall be responsible for all required laboratory tests, vaccinations, or procedures and animal identification prior to sale or change of ownership.

(14) Animals consigned for interstate movement or moving through the state of Kentucky from another state shall:

(a) Comply with the requirements of the state of destination prior to movement or be approved for movement subject to the requirements of that state;

(b) Provide documentation required by state of destination upon request [~~Certificate of Veterinary Inspection.~~

~~(a) Certificate of Veterinary Inspection shall be void thirty (30) days after date of inspection and issuance except as provided in 302 KAR 20:065.~~

~~(b) Approved Certificates of Veterinary Inspection or permits shall be required for all movements of livestock except equine prior to movement.~~

~~(c) A certificate of veterinary inspection shall specify the herd:~~

~~1. Certification~~

~~2. Accreditation,~~

~~3. Qualification;~~

~~4. Validation number, if applicable; and~~

~~5. Date of the last herd test.~~

~~(d) A certificate of veterinary inspection shall contain the following information:~~

~~1. The name and address of the consignor and consignee;~~

~~2. The herd status;~~

~~3. An accurate description of the livestock;~~

~~4. An accurate method of identifying the livestock;~~

~~5. A statement certifying that the animals are free from evidence of infection or exposure to any contagious, communicable or parasitic disease.~~

~~(e) A certificate of veterinary inspection stipulating vaccination shall include the:~~

~~1. Date of vaccination;~~

~~2. Name of vaccine;~~

~~3. Serial number of vaccine; and~~

~~4. Expiration date of the biologic or agent used.~~

~~(2) Permits.~~

~~(a) Permits shall be obtained from the chief livestock health official and shall include the:~~

~~1. Number of livestock;~~

~~2. Description of the livestock;~~

~~3. Identification of the livestock;~~

~~4. Farm or other place of origin;~~

~~5. Farm or other place of destination;~~

~~6. Arrival date of the livestock;~~

~~7. Name of the consignor and consignee; and~~

~~8. Any special restrictions relating to the movement of the livestock.~~

~~(b) Livestock, animals and poultry entering the Commonwealth under permit shall be:~~

~~1. Consigned to a natural person who is a resident of the state; or~~

~~2. Consigned to a legal entity authorized to do business within the state.~~

~~(3) Owner and shipper's declaration shall be accepted only for imported animals originating directly from the farm of origin and proceeding directly to immediate slaughter or to a public stockyard or state-federal approved stockyard for reconsignment to immediate slaughter with no diversion whatever enroute.~~

~~(4) No livestock, animals or poultry that are known to be affected with or that have been exposed to any infectious or contagious, communicable or parasitic disease, or that originated from a quarantined area or quarantined herd shall be imported into Kentucky or transported intrastate within Kentucky.~~

~~(5) All imports or interstate movements not in compliance with existing administrative regulations and statutes shall be subject to isolation and quarantine for compliance. No titer resulting from the standard tube test for brucellosis shall be accepted in the case of imports unless the animal or animals showing titer are negative to the card test. All required tests for quarantined imports shall be conducted at no expense to the Commonwealth of Kentucky. Imports not in compliance to existing statutes and administrative regulations shall not be eligible for indemnity payments.~~

~~(6) All brucellosis blood tests and other required laboratory tests shall be conducted in a state-federal approved laboratory.~~

~~(7)(a) All required tests and vaccinations, including brucellosis and tuberculosis, shall be performed by:~~

~~1. A licensed, accredited veterinarian, or~~

~~2. An authorized representative of the chief livestock health official; or~~

~~3. An authorized representative of the federal government.~~

~~(b) All required vaccinations, branding, testing, individual animal identification and other animal health procedures shall be performed using standards approved by the Chief Livestock Sanitary Official.~~

~~(8)(a) Except as otherwise set out in 302 KAR 20:065, and 302 KAR 20:070, the seller shall be responsible for all vaccinations, testing branding, individual animal identification and other animal health procedures prior to sale.~~

~~(b) No livestock shall be moved from the seller's premises until the requirements of paragraph (a) of this subsection have been completed.~~

~~(9) All livestock and poultry consigned for interstate movement shall comply with the regulations and statutes of state of destination prior to movement or be approved for movement subject to the regulations and statutes of that state.~~

~~(10) An approved Certificate of Veterinary Inspection or a Certificate of Veterinary Inspection submitted for approval or a permit shall be present in the office of the chief livestock health official at least seventy-two (72) hours prior to scheduled date of any sale or exhibition to occur in the Commonwealth of Kentucky.]~~

Section 2. Cleaning and Disinfection of Conveyances Used to Transport Animals [~~Livestock~~]. The owners and operators of planes, railway cars, trucks, or other conveyances that have been used for the movement of [~~livestock or~~] animals infected with or exposed to any [~~infectious, contagious or~~] communicable disease shall have such conveyances [~~vehicles~~] cleaned and disinfected [~~under official supervision~~]. A [~~Such~~] certificate of cleaning and disinfecting may be required to [~~shall be attached to the waybill or~~] be in possession of the operator or carrier.

Section 3. (1) The following material is incorporated by reference:

(a) "Permit for Movement of Restricted Animals the USDA APHIS VS", Form 1-27, June 1989;

(b) "Certificate of Veterinary Inspection Form, Kentucky Department of Agriculture, Office of State Veterinarian", KYSV-72, April 2005;

(c) "Equine Only Certificate of Veterinary Inspection Form, Kentucky Department of Agriculture, Office of State Veterinarian", KYSV-73, September 2006,

(d) "Small Animal Certificate of Veterinary Inspection Form, Kentucky Department of Agriculture, Office of State Veterinarian", KYSV-74, January 2006;

(e) "Reconsignee Certificate Form, Kentucky Department of Agriculture, Office of State Veterinarian", October 2004; and

(f) "Equine Interstate Event Permit, Memorandum of Understanding".

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: July 10, 2007

FILED WITH AGENCY: July 10, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2007, at 10 ET, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 2007, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert Stout or Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601, phone (502) 564-3956, fax (502) 564-7852.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Stout or Sue Billings

(1) Provide a brief summary of:

(a) What this administrative regulation does: Establishes requirements for premises of origin information, animal identification information, certificate of veterinary inspection forms, equine interstate passport forms, and entry permits.

(b) The necessity of this administrative regulation: To prevent introduction and spread of animal diseases and to protect the livestock economy of the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 257.030 authorizes the department to promulgate regulations necessary for administration and enforcement of KRS 257.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance for animal identification, movement documents, and health status.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: NA

(a) How the amendment will change this existing administrative regulation This amendment will update current regulations in response to changes in animal health programs and disease prevalence.

(b) The necessity of the amendment to this administrative regulation. Effective enforcement of regulations requires that they address current situations, concepts, and standards. This is vital to the effective control of disease and the efficient movement and marketing of animals into and within the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 257.030 requires that regulation be promulgated to address specific areas of livestock disease monitoring and animal disease control. The amendment is offered in response to changes in disease status and animal movement.

(d) How the amendment will assist in the effective administration of the statutes: Regulation of animal movement and disease control must reflect current science-based information and best practice protocols to provide for safe and efficient operation of our animal industries The amendment is based on this principle and adds requirements where needed and removes unnecessary restrictions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All livestock producers and exhibitors, livestock markets, fairs, and animal exhibition venues are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This revision may require nominal expenditures by the producer to provide approved animal identification for animal movement. For animals that do not leave the premises of origin, no new measures are required. This revision may require livestock markets to enhance their ability to identify and record the movement of animals through their facility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be nominal costs to producers and some infrastructure costs to marketing entities. These costs are indeterminable at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits will be to protect the state's livestock industry from serious animal disease outbreaks that may decrease all animal movement and business. The marketability of Kentucky livestock to other states and countries will increase. Producers, livestock markets and vendors will all benefit from the movement of animals properly identified, allowing for rapid traceback in response to animal disease outbreaks.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No expense.

(b) On a continuing basis: No expense.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund to KDA for personnel.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees involved.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any new fees, nor does it change previous fees.

(9) TIERING: Is tiering applied? No, all regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE
Livestock Sanitation
(Amendment)

302 KAR 20:030. Authority to inspect, test, identify, remove and dispose of livestock and poultry [~~cattle~~].

RELATES TO: KRS 246.210, 246.220, 257.010, 257.020, 257.030, 257.110

STATUTORY AUTHORITY: KRS 246.210, 246.220, 257.010, 257.020, 257.030, 257.110

NECESSITY, FUNCTION, AND CONFORMITY: To provide the necessary rules for inspection, testing, identification, removal and disposal of livestock and poultry [~~cattle~~]. This rule is necessary to prevent the spread of any infectious [~~contagious~~] and/or communicable disease.

Section 1. The State Board of Agriculture proclaims that the State Veterinarian or his representative may after reasonable notice enter upon any farm, stockyard, auction barn, [~~railroad car on siding, railroad yard,~~] or any other place where livestock and poultry [~~cattle~~] are handled, for the purpose of inspecting and/or testing any livestock and poultry [~~cattle~~] for [~~contagious and~~] communicable diseases[~~,~~] and may brand, tag or otherwise identify, any livestock and poultry [~~cattle~~] found diseased[~~,~~] and may after reasonable notice and appraisal remove and dispose of [~~after appraisal~~] any livestock and poultry [~~cattle~~] found to be diseased on such premises.

Section 2. The State Veterinarian or an authorized representative may enter any sale or exhibition premises for the purpose of surveillance testing. Surveillance testing may be done at sale and exhibition events for communicable diseases that present a risk to animal health or to public health.

(a) Testing may be done randomly.

(b) The owner of the animals shall provide premises of origin information on the species being tested, including the owner address and phone number.

(c) The owner of the animals shall not be responsible for any testing fees for a federal or state surveillance program.

(d) Test results may be provided to the owner.

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: July 10, 2007

FILED WITH LRC: July 10, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2007, at 10 ET, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 22, 2007, 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert Stout or Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601, phone (502) 564-3956, fax (502) 564-7852.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Stout or Sue Billings

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides authority for the State Veterinarian's personnel to inspect and test livestock and/or poultry for communicable diseases.

(b) The necessity of this administrative regulation: This regulation is necessary to prevent introduction of an animal disease, to control and eradicate animal diseases, and to protect the livestock economy of the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation explains specific areas of livestock disease monitoring and animal disease control for which the statute gives authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides guidance for disease control and monitoring.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will update current regulations to include poultry and other species of livestock in addition to cattle.

(b) The necessity of the amendment to this administrative regulation: Surveillance testing and inspection that include poultry and all livestock is vital to the effective control of disease.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 257.030 requires that regulation be promulgated to address specific areas of livestock disease monitoring and animal disease control.

(d) How the amendment will assist in the effective administration of the statutes: Animal disease control must reflect current science-based information and best practice protocols to provide for safe and efficient operation of our animal industries.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All livestock producers and exhibitors, livestock markets, fairs, and animal exhibition venues are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This revision will require that the regulated entities cooperate with surveillance and testing protocols.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no costs to producers for surveillance testing.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits will be to protect the state's livestock industry from serious animal disease outbreaks that may decrease all animal movement and business. The marketability of Kentucky livestock in other states and countries will increase.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No expense.

(b) On a continuing basis: No expense.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund to KDA for personnel.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees involved.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any new fees, nor does it change previous fees.

(9) TIERING: Is tiering applied? No, all regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE
Livestock Sanitation
(Amendment)

302 KAR 20:040. Entry into Kentucky.

RELATES TO: KRS Chapter 257, 9 C.F.R. parts 77, 78

STATUTORY AUTHORITY: KRS 246.295, 257.030, 257.070

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.070 requires that importation of animals into Kentucky complies with administrative regulations promulgated by the board. KRS 257.030 authorizes the board to establish necessary quarantines and other measures to control the movement of animals [~~livestock~~] into, through, or within Kentucky. This administrative regulation establishes health requirements for entry, including entry for sales or exhibition, for livestock and animals into Kentucky.

Section 1. General Provisions. (1) All animals entering Kentucky shall be subject to the requirements provided in 302 KAR 20:020.

(2) All animals shall be accompanied by a Certificate of Veterinary Inspection (CVI) or other official movement document except for exemptions listed under each species section. Examples of an official movement document are a way bill with a permit number and a federal movement form [~~except as provided by this section and Sections 3 and 9 of this administrative regulation~~].

(3) [~~(2)~~] If an entry permit is required by [~~Section 2, 3, 4, 6, 10, 11, 12, or 13 of~~] this administrative regulation, it shall be obtained by calling OSV at (502) 564-3956 during business hours, Monday through Friday 8 a.m. EST to 4:30 p.m. EST. The permit number shall be recorded on the CVI or other required document obtained pursuant to this subsection.

(4) OSV may be written or oral notice confirmed in writing, direct a person to comply with additional entry requirements. The State Veterinarian may determine, based on an epidemiological evaluation of current disease risks, that additional requirements are needed to prevent the introduction or spread of disease.

(5)[~~: (a) An entry permit may be obtained by calling (502) 564-3956, Kentucky's automated permit system, available twenty-four (24) hours a day.~~

~~(b) Permit numbers obtained pursuant to this subsection shall~~

~~be recorded on the Certificate of Veterinary Inspection.~~

~~(3)~~] All required tests shall be conducted by a state-federal approved laboratory as defined by 9 C.F.R. 79.1.

(6) A CVI for entry shall:

(a) Be valid for thirty (30) days from the date of issue;

(b) Become void upon arrival at designated destination, except for exhibition animals which may return home within thirty (30) days of original issue date; and

(c) State a valid destination address or PIN. [~~(4) A Certificate of Veterinary Inspection shall be void thirty (30) days after date of issuance for entry into Kentucky, except as noted on the Certificate of Veterinary Inspection.~~]

Section 2. Cattle and Other Bovine Species. (1) General requirements for entry.

(a) Cattle for exhibition, sale except as noted in subsection (2)(b) of this section, breeding or feeding purposes shall meet requirements in subsections (2) and (3) of this section [~~An entry permit shall be required prior to entry for all cattle except steers, spayed heifers, and cattle presented for exhibition only. The permit number shall be recorded on the Certificate of Veterinary Inspection~~].

(b) Cattle imported directly to a recognized slaughter center or a state-federal approved stockyard shall meet the requirements in subsections (3) and (4) of this section [~~If cattle from a brucellosis certified free state or tuberculosis accredited free state move directly from a farm of origin, they may enter a state-federal approved stockyard in Kentucky without an entry permit or Certificate of Veterinary Inspection~~].

(c) Cattle imported to a Kentucky premises from an out of state federally approved livestock market shall meet the requirements in subsections (3) and (4)(d) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit

(a) All cattle entering the state for sale, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) An entry permit shall be required prior to entry for all cattle except steers, spayed heifers, and cattle presented for exhibition only. The permit number shall be recorded on the CVI.

(3) [~~If animals are from a tuberculosis accredited or a brucellosis certified herd, Certificate of Veterinary Inspection shall document the herd accreditation and herd certification number with the date of the last herd test for tuberculosis and brucellosis.~~

~~(2)~~] Specific diseases.

(a) Brucellosis.

1. The importation of cattle and bison shall comply with 9 C.F.R. Part 78.

2. Animals from class free states are exempt from testing.

3. Animals originating from a brucellosis certified herd are exempt from testing. Herd certification number and date of last herd test shall be indicated on the CVI.

(b) Tuberculosis.

1. The importation of cattle and bison shall comply with 9 C.F.R. Part 77.

2. Animals from class free states are exempt from testing.

3. Animals originating from a tuberculosis accredited herd are exempt from testing. Herd accreditation number and date of last herd test shall be indicated on the CVI.

(c) [~~(3) Other disease requirements.~~

~~(a)~~] Scabies. Cattle affected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for entry [~~import~~] into Kentucky except:

1. In accordance with 9 C.F.R. Part 73 [~~72~~] of the USDA APHIS VS [~~Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture~~]; and

2. If written permit from the State Veterinarian or an [~~his~~] authorized representative is obtained pursuant to 9 C.F.R. Part 73 [~~72~~].

(d) [~~(b)~~] Ticks. [~~Cattle infested with ticks (Margarophus Annulatus) or exposed to tick infestation shall not be eligible for import into Kentucky for any purpose.~~

~~(c)~~] Cattle from a state-federal tick quarantined area, as defined by 9 C.F.R. Part 72, shall not be eligible for entry [~~import~~] into Kentucky except:

1. In accordance with 9 C.F.R. Part 72 of the USDA APHIS UV [~~Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture~~]; and

2. If written permit from the State Veterinarian or an [~~his~~] authorized representative is obtained pursuant to 9 C.F.R. Part 72.

(e) Johne's Disease. The importation of cattle or other bovidae shall comply with 9 C.F.R. Part 80. [~~(d) Cattle infected with warts, ringworm or any other contagious, infectious or communicable disease not specified by this section shall not be eligible for entry.~~]

(4) Other movements.

(a) If cattle from a brucellosis class-free state and a tuberculosis class-free state move directly from a farm of origin, they may enter a state-federal approved stockyard in Kentucky without an entry permit or CVI. Such cattle shall meet the requirements in subsection (4)(c) of this section.

(b) Slaughter cattle. Cattle consigned for immediate slaughter may enter Kentucky without an official test for brucellosis or tuberculosis if the cattle are consigned for immediate slaughter to a recognized slaughtering center or to an approved state-federal stockyard [~~or federal stockyard,~~] as defined by 9 C.F.R. Part 71[~~71.1 and 71.20~~], for reconsignment to a recognized slaughtering center. Animals diverted en route shall be in violation of this administrative regulation.

(c) The seller's name and address and premises of origin or PIN shall be provided for cattle imported to a state-federal approved stockyard or directly to a recognized slaughtering center.

(d) Cattle moving from an out of state state-federal approved stockyard shall be accompanied by a bill of sale or way bill.

[~~(5) Exhibition. All cattle presented for exhibition shall be in compliance with the requirements of subsections (1) to (4) of this section and shall be accompanied with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.~~]

Section 3. Horses and Other Equine Species. (1) General requirements for entry.

(a)[~~1.~~] All horses and other equidae entering Kentucky for any purpose, except for horses entering under subsection (1)(b) or (d) of this section, shall meet the requirements in subsections (2) and (3) of this section [~~be accompanied by a Certificate of Veterinary Inspection except horses and other equidae purchased at an approved out-of-state horse sale~~].

(b) Equine purchased by a licensed Kentucky dealer at an out of state horse sale shall:

1. Enter the state on an entry permit.

2. Provided proof of a negative equine infectious anemia (EIA) test within the last twelve (12) months or shall be tested for EIA within two (2) weeks of entry, or

3. Move directly to an approved Kentucky horse sale.

(c) Equine entering the state for racing purposes shall meet the requirements in KAR Titles 810 and 811.

(d) Equine moving directly to a veterinary facility in Kentucky shall be exempt from subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection

(a) A CVI shall be required for equine entering the state except as noted in subsection (1)(b) and (d) of this section and shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) Equine Interstate Event Permits from states participating with Kentucky shall be accepted for exhibition purposes in lieu of the CVI and EIA test report provided they are within six (6) months of the issue date and there has been no change of ownership. They shall meet the requirements in 302 KAR 20:020, Section 5.

(3) [~~2. An approved out-of-state horse sale shall be one (1) which:~~

~~a. Complies with the requirements for holding areas;~~

~~b. Has a cleaning and sanitation program;~~

~~c. Has an assigned veterinarian to draw blood samples for the EIA Program;~~

~~d. Keeps all records of sellers and buyers; and~~

~~e. Maintains and provides to the state veterinarian a list of scheduled sale dates.~~

~~3. The certificate shall include all tests that have been conducted as well as all vaccinations including vaccination date and type of vaccine used.~~

~~(b) Attached to the Certificate of Veterinary Inspection shall be~~

~~a copy of a certificate of report from a laboratory approved by the USDA, pursuant to 9 C F R. 75 4, showing the animals to be negative to an Agar Gel Immunodiffusion (AGID) test or other USDA approved test, pursuant to 9 C.F.R. 75.4, for equine infectious anemia.~~

~~(c) Horses with evidence of a contagious, infectious, or communicable disease or exposure shall not be eligible for entry~~

~~(2)~~] Equine infectious anemia.

(a) All horses and other equidae, except unweaned foals accompanied by their dam, [~~offered for sale~~] shall be negative to a [~~an AGID test or other~~] USDA approved test, pursuant to 9 C F R Part 75, [~~for equine infectious anemia~~] within twelve (12) months prior to entry.

(b) A copy of the EIA test results from a laboratory approved by the USDA, pursuant to 9 C.F.R Part 75, shall be attached to the CVI

(4) Approved Kentucky horse sales.

(a) Horses and other equidae purchased by a licensed Kentucky dealer at an out-of-state [~~approved horse~~] sale[~~, as established by subsection (1)(a)2 of this section, and entering Kentucky: 1.a.~~] may move directly to an approved [a] Kentucky horse sale without proof of a negative EIA test.

(b) All horses and other equidae presented without proof of a negative EIA test within the previous twelve (12) months shall have a blood sample drawn for EIA testing by the approved market veterinarian at the seller's expense [~~approved auction market. On entry into the market all horses and other equidae shall have an Equine Infectious Anemia (EIA) test conducted under the requirements of 302 KAR 2:065, Section 4(1); or~~

~~b. May be purchased by a Kentucky licensed livestock dealer and may be moved directly to his Kentucky premises. On entry into the premises, the animals shall be kept separate and apart from other animals on the premises. Horses may move to an approved horse sale, a sale which satisfies the requirements of an approved out-of-state horse sale established by subsection (1)(a)2 of this section, within fourteen (14) days post entry or shall have an official EIA test conducted within fourteen (14) days post entry. The dealer shall document the movement of horses to an approved horse sale. If horses remain on the dealer's premises, the dealer shall document that an official EIA test has been conducted within the required fourteen (14) days post entry.~~

~~2. Shall obtain an entry permit prior to entry into Kentucky. The permit may be obtained by calling (502) 564-3956, day or night.~~

~~3. Shall be accompanied by a bill of laden or waybill in lieu of a Certificate of Veterinary Inspection. The bill of laden or waybill shall document entry permit, number of horses purchased, individual horse identification, sex, age, color, brand, tattoo (if available), market sale identification and all other markings.~~

~~4. Shall be available for inspection by an agent of the Board of Agriculture.~~

~~5. May be placed under quarantine on entry. Quarantine shall be released when the requirements of paragraph (a) of this subsection have been met.~~

~~6. If purchased by a Kentucky licensed livestock dealer, with an out-of-state address, shall be moved directly to a Kentucky approved horse sale. Movement to any other location within Kentucky shall require an official EIA certificate, as defined by 9 C.F.R. 75.4.~~

~~7. May move from an out-of-state farm of origin except the movement shall be directly from the farm of origin to a Kentucky approved horse sale.~~

~~8. Except unweaned foals accompanied by their dam, offered for entry for reasons other than sale, such as entry into fairgrounds, livestock showgrounds, public boarding stables, trail rides, or racing, shall be negative to an AGID test or other USDA approved test for equine infectious anemia within twelve (12) months prior to entry.~~

~~9. Shall have a veterinarian's statement that inspection was made within the past thirty (30) days and the animals did not show clinical symptoms of a contagious, infectious, or communicable disease or exposure thereto~~]

Section 4. Swine. (1) General requirements for entry.

(a) Domestic swine for exhibition, sale except for those covered in paragraph (b) of this subsection, breeding or feeding shall meet requirements in subsections (2) and (3) of this section.

(b) Swine imported directly to a recognized slaughtering center of a state-federal approved slaughter-only stockyard shall meet the requirements in subsections (3) and (4) of this section.

(c) Swine imported to a Kentucky premises from an out of state federally approved stockyard shall meet the requirements in subsection (3) and (4) of this section

(d) Swine that shall not be imported for any purpose:

1. Garbage fed swine;

2. Wild, captive wild, or feral swine, Sus scrofa per definition, including Russian wild boars and Eurasian wild boars; and

3. Swine vaccinated with Pseudorabies vaccine

(2) Certificate of Veterinary Inspection and Entry Permit

(a) All swine entering the state for sale except as noted in subsection (1)(b) and (c) of this section, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) An entry permit shall be required prior to entry for all swine entering for sale, breeding, or feeding purposes. An entry permit shall be required for exhibition purposes from states with less than Stage 5 Pseudorabies status. The permit number shall be recorded on the CVI

(3) [~~An entry permit shall be obtained prior to movement for all swine entering for breeding and feeding purposes.~~

~~(b) All swine shall be officially identified by a state-federal approved identification, except as noted in 302 KAR 20:220.~~

~~(c) If animals are from validated and qualified herds, the Certificate of Veterinary Inspection shall show the herd validation and qualification number with the date of the last herd test for brucellosis and pseudorabies.~~

~~(d) Garbage fed swine. Swine fed raw garbage shall not be imported for any purpose. Swine fed properly cooked garbage in accordance with 302 KAR 20:100, Section 5, shall be eligible for import directly to a recognized slaughtering center only.~~

~~(2)~~] Specific diseases.

(a) Brucellosis. The importation of swine shall comply with 9 C.F.R. Part 78.

(b) Pseudorabies. Testing shall not be required for swine imported [~~for breeding, sale, or exhibition purposes~~] if the swine originated from a Pseudorabies Stage 5 [~~state or from a pseudorabies qualified free herd~~]. Swine originating from a state with less than Pseudorabies Stage 5 status shall comply with 9 C F.R Part 85

(4) Swine imported to a state-federal approved livestock market or directly to a recognized slaughtering center or to a Kentucky premises from an out of state federally approved stockyard shall meet the following requirements:

(a) Official identification; and

(b) The seller's name and address and premises of origin address and or PIN. [~~originated from a Stage 2, 3, or 4 state, or a state with split state status for pseudorabies shall have a negative pseudorabies test within thirty (30) days prior to entry. The Certificate of Veterinary Inspection shall document that the swine did originate from a herd that has been free of pseudorabies for the past six (6) months. On entry, breeding animals shall be quarantined and shall show a negative postmovement pseudorabies test within thirty (30) to sixty (60) days, except those originating from a Pseudorabies Stage 5 state.~~

~~(3) Feeder pigs. All feeder pigs shall also comply with 302 KAR 20:210, Pseudorabies surveillance. Imported feeder pigs originating from a Stage 5 state may move directly from the premise where farrowed and shall be officially identified, by an official premise tattoo or official identification issued by the state of origin. The movement of commingled feeder pigs originating from multiple states and multiple premises shall require that a 95/5 statistical sampling be conducted prior to entry.~~

~~(4) Other movements.~~

~~(a) Farm premises. Identity to the farm of origin shall be maintained on all breeding and feeding swine imported from a farm premises to a state-federal approved stockyard or if movement is directly to a Kentucky premises.~~

~~(b) Feeder pigs. Movement of feeder pigs shall be accompanied by a Certificate of Veterinary Inspection. The Certificate shall document entry permit number, official test date and results, and~~

~~official identification.~~

~~(5) Exhibition. An entry permit shall not be required for exhibition purposes only, except for swine from states that lose their Stage 5 pseudorabies classification. All swine shall be in compliance with the requirements of subsections (2) to (4) of this section.]~~

Section 5. Sheep and Lambs. (1) General requirements for entry [~~for sale and exhibition~~].

(a) Sheep and lambs for sale except for those covered in paragraph (b) and (d) of this subsection, exhibition, breeding, or feeding purposes shall meet requirements in subsections (2) and 3) of this section.

(b) Sheep imported directly to a state-federal approved stockyard or a recognized slaughtering center shall meet requirements in subsections (3) and (4) of this section.

(c) Sheep and lambs that originate from known trace, source or infected Scrapie flocks as determined by the USDA APHIS VS in compliance with 9 C F.R. Part 79 shall not be imported.

(d) Sheep imported to a Kentucky premises from a state-federal approved stockyard shall meet the requirements in subsections (3) and (4) of this section

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All sheep and lambs entering the state for sale except as noted in subsection (1)(b) and (d) of this section, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c)

(b) An entry permit shall be required for sheep and lambs entering for sale, breeding, or feeding purposes.

(3) [~~Certificate of Veterinary Inspection shall have prior approval by the State Veterinarian of the state of origin. For entry into Kentucky, all breeding sheep shall originate from a consistent state meeting the requirements of the USDA Scrapie Flock Certification Program in 9 C.F.R. 79.1, and shall be identified with an official USDA Scrapie Program identification tag. Market lambs under the age of eighteen (18) months shall be identified as documented on the Certificate of Veterinary Inspection.~~

~~(2)~~] Specific diseases.

(a) Scrapie.

1. All sheep shall [~~Entry for sale. Sheep and lambs shall not be imported that~~] originate from a Scrapie consistent state meeting the requirements of the [~~or known to be exposed to flocks listed as a scrapie affected or surveillance flock by~~] USDA APHIS VS Scrapie Flock Certification Program [~~Animal Plant Health Inspection Service, Veterinary Services~~] in 9 C F R. Part 79.

2. Sheep that require a CVI for movement shall be identified with an official USDA Scrapie Program identification tag or other official identification method and documented on a CVI.

3. If enrolled in the USDA Scrapie Flock Certification Program, the Scrapie Flock number shall be recorded on the CVI. [~~1. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program shall be eligible for entry for sale. The Certificate of Veterinary Inspection shall document the flock is in compliance with the USDA Scrapie Flock Certification Program.~~

~~2. Entry for exhibition.~~

~~a. Sheep or lambs which originate from a flock enrolled in the USDA Scrapie Flock Certification Program shall be eligible for exhibition.~~

~~b. Sheep and lambs which originate from a flock listed as a surveillance flock by USDA Animal Plant Health Inspection Service, Veterinary Services may be eligible for exhibition only. A statement by the veterinarian issuing the Certificate of Veterinary Inspection shall document that the origin flock is in compliance with the USDA Scrapie Flock Certification Program.~~

~~c. All sheep and lambs for exhibition shall be in compliance with other requirements of this section and in addition shall be identified individually by ear or flank tattoo, ear tag or microchip. The identification shall be entered on an approved Certificate of Veterinary Inspection.~~]

(b) Scabies. Sheep affected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for entry into Kentucky [~~All sheep or lambs for breeding or feeding purposes imported from a farm, ranch or like premises shall be accompanied by an approved Certificate of Veterinary Inspection indicating the sheep and lambs originated directly and immediately from an official scabies eradicated free area.~~]

(c) Sore mouth. Any sheep or lambs showing lesions of contagious ecthyma [~~exythma~~] shall not be imported.

(d) Johne's. The importation of sheep and lambs shall comply with 9 C F R. Part 80.

(4) [~~Sheep and lambs infected with a contagious, infectious, and communicable disease shall not be eligible for entry, sale, or exhibition.~~

~~(3)~~] Other movements.

(a) [All] Sheep and lambs from Scrapie consistent states [~~meeting requirements of the USDA Scrapie Flock Certification Program~~] may be imported into Kentucky for immediate slaughter if consigned directly to a recognized slaughtering center approved by the USDA or the State Veterinarian [~~of Kentucky~~] or to [~~a public stockyard,~~] a state-federal approved stockyard or [~~,~~] concentration point[~~, or public stockyard~~] if reconsignment from that point is to immediate slaughter.

(b) Only sheep and lambs from Scrapie consistent states may be imported to state-federal approved stockyards or state approved concentration points for the purpose of sale.

(c) VS Form 1-27 shall be required for movement of sheep and lambs from trace, source and infected flocks to an approved site.

(d) Sheep and lambs imported to state-federal approved stockyards, concentration points or directly to a recognized slaughtering center or to Kentucky premises from a state-feeral approved stockyard shall meet the following requirements:

1. Be identified in accordance with 9 C.F.R. Part 79; and

2. The seller's name and address and premises of origin address or PIN.

[~~(4) Exhibition. All sheep and lambs for exhibition shall be in compliance with the requirements of subsections (1) to (3) of this section and in addition shall be identified individually by ear or flank tattoo, ear tag, or microchip. The identification shall be entered on an approved Certificate of Veterinary Inspection.~~]

Section 6. Goats. (1) General requirements for entry.

(a) Goats entering Kentucky for sale except for those covered in paragraph (b) of this subsection, exhibition, breeding, or feeding purposes shall meet the requirements in subsections (2) and (3) of this section.

(b) Goats imported directly to a recognized slaughtering center or a state-federal approved stockyard, telemarketing sale, or KDA approved graded sale must meet the requirements in subsections (3) and (4) of this section.

(c) Goats imported to a Kentucky premises from state-federal approved stockyard shall meet the requirements in subsections (3) and (4) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All goats entering the state for sale except as noted in subsection (1)(b) and (c) of this section, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1e(3)(d).

(b) An entry permit shall be required for goats entering for sale, breeding, or feeding purposes.

(3) Specific diseases.

(a) Scrapie

1. All goats shall originate from a Scrapie consistent state meeting the requirements of the USDA Scrapie Flock Certification Program in 9 C.F.R. Part 79.

2. Goats that require a CVI for movement shall be identified with an official USDA Scrapie Program identification tag or other official animal identification.

(b) [~~Scabies. All goats shall originate from a scabies-free area.~~

~~(b) Scrapie. Goats from a herd under surveillance for scrapie or those that are known to have been exposed to or that are progeny shall not be imported.~~

~~(c)~~] Brucellosis. Animals six (6) months of age or older shall have an official negative test within thirty (30) days prior to entry or originate directly and immediately from a class free [~~brucellosis-free~~] state or a brucellosis-certified [~~free~~] herd.

(c) [~~(d)~~] Tuberculosis. Animals six (6) months of age or older shall have an official negative tuberculin test within sixty (60) days prior to entry or originate directly and immediately from a class [~~tuberculosis-~~]free state or a tuberculosis-accredited [~~an accredited~~

~~tuberculosis-free~~] herd.

(d) Scabies. Goats affected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for entry into Kentucky.

(e) Johne's. The importation of goats shall comply with 9 C.F.R. Part 80.

(4) Goats of any age entering a state-federal approved Kentucky stockyard, KDA-approved graded sale, telemarketing assembly point, or a Kentucky recognized slaughtering center or a Kentucky premises from a state-federal approved stockyard shall meet the following requirements:

(a) Be identified in accordance with 9 C.F.R. Part 79; and

(b) The seller's name and address and premises of origin address and or PIN [~~(c) All goats. An entry permit shall be required for all goats for entry into Kentucky for sale only.~~

~~(2) Exhibition. All goats for exhibition shall be in compliance with requirements of subsection (1) of this section~~].

Section 7. Poultry and Farm-raised Uplande Game Birds and Other Avian Species. (1) General requirements for entry.

(a) Birds five (5) months and older for sale or exhibition purposes shall meet the requirements in subsections (2) and (3) of this section.

(b) Chicks and hatching eggs imported shall meet the requirements in subsections (2) and (3)(a)2. of this section.

(c) All birds imported to an approved slaughter facility and all commercial birds moving between a company's production units shall meet the requirements in subsections (3) and (4) of this section.

(2) Certificate of Veterinary Inspection.

(a) Appropriate National Poultry Improvement Plan certificate as specified in 9 C.F.R. Part 145 including flock number issued; or

(b) CVI with appropriate test date.

(3) Specific diseases:

(a) [~~Poultry shall be individually identified with an official leg or wing band. The leg or wing band number shall be recorded on the Certificate of Veterinary Inspection which shall accompany the animals. All poultry shall comply with the requirements of 302 KAR 20:250, Avian influenza.~~

~~(2)~~] Salmonella pullorum.

1. Birds four (4) months of age and older shall be negative to an official Salmonella pullorum test within thirty (30) days of entry or originate from a NPIP flock [~~Except as provided by KRS 257.390, a negative agglutination test shall be required for all poultry within thirty (30) days prior to date of entry~~]. The name of the laboratory and date of test and/or the NPIP flock number [~~conducting the test and test results~~] shall be recorded on the CVI.

2. [~~a Certificate of Veterinary Inspection which shall accompany poultry.~~

~~(3) Other movements.~~] Chicks and hatching eggs shall originate from NPIP flocks or the state equivalent of an NPIP flock [~~a flock that satisfies the requirements of KRS 257.410~~].

(b) Avian influenza. All poultry shall comply with the requirements of 302 KAR 20:250, Avian influenza.

(4) Other movements.

(a) Commercial birds moving between company units shall have a way bill or log sheet stating origination of birds and intended destination with flock NPIP number.

(b) Birds going directly to an approved slaughter facility shall provide the name and address for premises of origin. [~~Exhibition. A Certificate of Veterinary Inspection shall accompany all poultry imported into Kentucky. All poultry shall be inspected prior to exhibition for evidence of any contagious, infectious, or communicable disease. Evidence of any contagious, infectious, or communicable disease shall be justification for removal of poultry from exhibition or sale at no expense to the Commonwealth of Kentucky.~~]

Section 8. Psittacine and Pet Birds. The entry of psittacine and pet birds shall comply with 9 C.F.R. Part 82.

(1) General requirement for entry.

(a) All psittacine and pet birds imported for any purpose shall meet the requirements in subsection (2) of this section.

(b) All psittacine and pet birds shall be identified with official identification.

(c) All importers of psittacine and pet birds for other than exhibition purposes shall keep records that indicate the origin and date of shipment, the name and address of the breeder, the number of birds shipped, and the name and address of the persons to whom the imported birds are sold.

(2) Certificate of Veterinary Inspection. All imported psittacine and pet birds shall be accompanied by a CVI, inspected and found free of infectious and communicable diseases within fifteen (15) days immediately prior to the date of entry [~~The importation of psittacine birds shall comply with 9 C.F.R. Part 82~~].

Section 9. Ratites. (1) General requirements for entry. Ratites imported for any purpose shall meet requirements in subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All ratites entering the state for sale, exhibition, breeding, or feeding purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) An entry permit shall be obtained from OSV prior to entry of ratites into Kentucky. The permit number shall be recorded on the CVI and the certificate shall accompany the animals on entry.

(c) All ratites shall have a permanent official identification.

(3) Specific diseases.

(a) Ratites shall be negative to an official test of Avian Influenza within thirty (30) days prior to entry or originate from a NPIP AI clean flock.

(b) Ratites shall be negative to an official test for Salmonella pullorum within thirty (30) days prior to entry or originate from a NPIP flock.

Section 10. Dogs and Cats. (1) General Requirements for Entry. Dogs, cats and ferrets for sale, exhibition and/or breeding purposes shall meet requirements in subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection.

(a) All dogs, except as noted in paragraph (b) of this subsection, cats, and ferrets entering the state for any purpose shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) Service dogs shall be exempt from a CVI requirement, but shall have a current rabies vaccination certificate.

(3) [~~All dogs over four (4) months of age imported for sale or exhibition shall be accompanied by a Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies, or from an area where rabies is known to exist, and have not been exposed to rabies.~~] All dogs, cats, and ferrets over four (4) months of age imported for sale, [~~or~~] exhibition, of any other purpose shall be vaccinated against rabies by a licensed veterinarian in accordance with the guidelines in [~~not less than fourteen (14) days nor more than twelve (12) months prior to the date of consignment if a killed virus vaccine is used. Any vaccine approved for three (3) year immunity by~~] the "Compendium of Animal Rabies Vaccines" prepared by the National Association of State Public Health Veterinarians, Inc., and available at www.cdc.gov.

Section 11. Exotic Ruminants, Circus and Menagerie Animals. (1) General requirements for entry. All exotic ruminants, circus and menagerie animals imported into the state for sale, exhibition or breeding purposes shall meet requirements in subsections (2), (3), and (4) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All exotic ruminants, circus and menagerie animals entering the state for sale, exhibition or breeding purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) A CVI shall be valid for thirty (30) days.

(2) [~~, shall qualify the dog if it is one (1) year of age when vaccinated. Show or performing dogs in the state temporarily for a period of ten (10) days shall not be required to furnish a Certificate of Veterinary Inspection.~~

~~(2) All cats four (4) months of age or older imported for sale or exhibition shall be vaccinated against rabies not less than fourteen~~

~~(14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Cabinet for Health Services, Department for Public Health, and listed at www.cdc.gov, in addition to satisfying the requirements of subsection (1) of this section.~~

~~Section 10. Fur Bearing Animals, Domesticated Wild Animals and Zoo Animals. (1) Wild and semiwild animals under domestication or in custody may be imported into the state if:~~

~~(a) Accompanied by an entry permit and Certificate of Veterinary Inspection;~~

~~(b) A report of the number of animals is made to the State Veterinarian of Kentucky within ten (10) days; and~~

~~(c) That immediate opportunity for examination is afforded a representative of the Division of Animal Health, Kentucky Department of Agriculture, to determine the health status of the animal or animals.~~

~~(2)~~] A transportation permit from the Kentucky Department of Fish and Wildlife Resources shall be required [~~on wild, game animals, birds and fish~~]. The transportation permit shall be obtained from the Kentucky Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601[~~, telephone (502) 564-3400~~].

(4) Specific disease requirements

(a) Tuberculosis. Except as noted in paragraph (d) of this subsection, no person shall import an exotic ruminant or bovine unless the animal tests negative on a tuberculosis test approved by the department and conducted not more than sixty (60) days prior to entry date.

(b) Brucellosis. Except as noted in paragraph (d) of this subsection, no person shall import an exotic ruminant or bovine unless the animal tests negative on a brucellosis test approved by the department and conducted not more than thirty (30) days prior to entry date.

(c) EIA. All equine species animals shall meet the requirement in 302 KAR 20:040, Section 3(3)(a).

(d) Johne's. The importation of all exotic ruminants shall comply with 9 C.F.R. Part 80.

(e) Section 4(a) and (b) of this administrative regulation does not apply to an exotic ruminant imported directly to an institution accredited by the American Association of Zoological parks and aquariums.

[~~Section 11. Ratites (Ostrich, Emu, Rhea, Cassowary, Kiwi, etc.). (1) General requirements.~~

~~(a) An entry permit shall be obtained by calling (502) 564-3956 prior to entry into Kentucky. The permit number shall be recorded on the Certificate of Veterinary Inspection and the certificate shall accompany ratites on entry.~~

~~(b) All ratites shall have a permanent official identification approved by a state-federal agency.~~

~~(c) Any ratite with evidence of a contagious, infectious, or communicable disease shall not be eligible for entry.~~

~~(2) Specific diseases.~~

~~(a) Ratites shall be negative to an official test for Avian Influenza within thirty (30) days prior to entry.~~

~~(b) Ratites shall be negative to an official test for Salmonella Pullorum within thirty (30) days prior to entry.~~

~~(c) A Certificate of Veterinary Inspection shall include a statement that the ratites are healthy and are not known to have been exposed to any contagious, infectious or communicable diseases within the last six (6) months.~~

~~(3) Exhibition. Ratites presented for exhibition shall be in compliance with the requirements of subsections (1) and (2) of this section.~~]

Section 12. Camelids [~~(Llamas, Alpacas, Camels, etc.)~~]. (1) General requirements for entry. Camelids imported for any purpose shall meet requirements in subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection and Entry Permit.

(a) All camelids entering the state shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) An entry permit shall be obtained from OSV prior to entry of camelids into Kentucky [~~by calling (502) 564-3956~~]. The permit number shall be recorded on the CVI [~~Certificate of Veterinary Inspection~~] and the certificate shall accompany the animals on entry.

[~~(b) Camelids not weaned, when accompanied by their dam, shall be identified and recorded on the dam's Certificate of Veterinary Inspection.~~

~~(2)~~] Specific diseases.

(a) Brucellosis. Camelids imported from class free states require no test. Camelids six (6) months of age or older from states not class free shall be negative to an official brucellosis test within thirty (30) days prior to entry.

(b) Tuberculosis. Camelids imported from class free states require no test. Camelids six (6) months of age or older from states not class free shall be negative to an official tuberculosis test within sixty (60) days of entry. The injection site should be in a non-haired area that may be inspected visually and by palpation. [~~an official axillary tuberculin test within sixty (60) days prior to entry.~~

~~(3) Exhibition. For exhibition purposes, all camelids shall be in compliance with the requirements of subsections (1) and (2) of this section.~~]

Section 13. Cervids. KRS Chapter 150 prohibits the importation into Kentucky of all the members of the animal family Cervidae. [~~(Deer, Elk, Moose, and All Other Members of the Family Cervidae). (1) General requirements.~~

~~(a) All cervids shall be accompanied on entry by a Certificate of Veterinary Inspection which shall include an entry permit number and official individual animal identification. The certificate shall be valid for thirty (30) days after issuance.~~

~~(b) An entry permit may be obtained by calling (502) 564-3956, Kentucky's automated permit system, available twenty-four (24) hours a day. The entry permit number shall be recorded on the Certificate of Veterinary Inspection.~~

~~(c) A transportation permit from the Kentucky Department of Fish and Wildlife Resources shall be required pursuant to 301 KAR 2:083.~~

~~(2) Specific diseases.~~

~~(a) Brucellosis. Captive cervids six (6) months of age or older shall:~~

~~1. Be negative to an official USDA-approved brucellosis test, as established by 9 C.F.R. 78, within thirty (30) days of entry; or~~

~~2. Originate directly and immediately from an certified brucellosis free herd.~~

~~(b) Tuberculosis. The official tuberculosis tests shall be single cervical tuberculin test (SCT). Captive cervids six (6) months of age or older shall be negative to SCT test within sixty (60) days prior to entry, except if originated from an accredited tuberculosis free herd.~~

~~(c) Cervids originated from a tuberculosis quarantined state or area shall not be imported.~~

~~Section 14. Wild Free Ranging Cervid. (1) Wild free ranging cervids shall not be imported from a state quarantined for brucellosis or tuberculosis.~~

~~(2) Wild free ranging cervids shall not be isolated prior to entry unless required by the state veterinarian for post entry testing.~~

~~(3) Wild free ranging cervid shall have a SCT test conducted within thirty (30) days prior to entry. Cervids that are included in a group that has a classified tuberculosis suspect or tuberculosis positive shall disqualify all cervid of that group for entry.~~

~~(4) Wild free ranging cervids six (6) months of age or older shall have an official USDA approved brucellosis test within thirty (30) days of entry. Cervids that are included in a group that has a brucellosis suspect or brucellosis positive shall disqualify all cervids of that group for entry.~~

~~(5) Wild free ranging cervids shall have a statement recorded on a Certificate of Veterinary Inspection that the cervids are healthy and are not known to have been exposed to any contagious, infectious, or communicable disease within the last twelve (12) months.~~

~~Section 15. All cervids entering Kentucky shall comply with provisions of 9 C.F.R. 77.20 - 9 C.F.R. 77.41.~~]

Section 14. [16.] Federal Regulations Adopted Without Change. (1) The following federal regulations govern the subject matter of this administrative regulation and are hereby adopted without change:

(a) 9 C.F.R. Part 71, General Provisions;
(b) 9 C F R Part 72, Ticks;
(c) 9 C F.R. Part 73, Scabies;
(d) 9 C F R Part 75, Equine Infectious Anemia;
(e) 9 C.F.R. Part 77, Tuberculosis,
(f) [(1-1-02 Edition), and
(b)] 9 C.F.R. Part 78, Brucellosis;
(g) 9 C.F.R. Part 79, Scrapie;
(h) 9 C.F.R. Part 80, Johne's Disease and Domestic Animals;
(i) 9 C F R Part 85, Pseudorabies;
(j) 9 C F.R. Part 145, National Poultry Improvement Plan; and
(k) 9 C F.R. Part 161, Accredited Veterinarian; [(1-1-02 Edition)]

(2) The federal regulations are available for inspection and copying, during normal business hours of 8 a.m. to 4:30 p.m., Eastern Time, excluding state holidays, at the OSV [Division of Animal Health], 100 Fair Oaks, Frankfort, Kentucky 40601, or may be purchased from the U.S. Superintendent of Documents, Washington, D.C.

Section 15. (1) the following documents are incorporated by reference:

(a) "Permit for movement of restricted animals the USDA APHIS VS Form 1-27", (June 1989);

(b) "Certificate of Veterinary Inspection Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-72, (Apr 2005);

(c) "Equine Only Certificate of Veterinary Inspection Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-73, (Sept. 2006);

(d) "Small Animal Certificate of Veterinary Inspection Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-74, (Jan 2006);

(e) "Equine Infectious Anemia (EIA) Test Form", Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-301, (July 2005);

(f) "EIA Laboratory Test Form, USDA APHIS VS Form 10-11", (May 2003); and

(g) "Compendium of Animal Rabies Prevention and Control", (2006)

RICHIE FARMER, Commissioner
APPROVED BY AGENCY: July 10, 2007
FILED WITH AGENCY July 10, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2007, at 10 Eastern Time, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 23, 2007. Five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON. Robert Stout or Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601, phone (502) 564-3956, fax (502) 564-7852.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Stout or Sue Billings

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation provides requirements for the interstate movement of animals into Kentucky.

(b) The necessity of this administrative regulation This regulation is necessary to prevent introduction of an animal disease and to protect the livestock economy of the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation explains specific areas of livestock disease monitoring and animal disease control for which the statute gives authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides requirements for animal movement, disease control and monitoring

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will update current regulations in response to changes in animal health programs and disease prevalence and therefore better serve KY's animal industries.

(b) The necessity of the amendment to this administrative regulation: Program disease status has changed over the years through the joint efforts of state and federal animal health officials. Effective enforcement of regulations requires that they address current situations, concepts and standards. This is vital to the effective control of disease and the efficient movement and marketing of animals into and within the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 257.030 requires that regulation be promulgated to address specific areas of livestock disease monitoring and animal disease control. The amendment is in response to changes in disease status and animal movement.

(d) How the amendment will assist in the effective administration of the statutes: Regulation of animal movement and disease control must reflect current science-based information and best practice protocols to provide for safe and efficient operation of our animal industries. The amendment is based on this principle and adds requirements where needed and removes unnecessary restrictions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All livestock producers and exhibitors from outside the State of Kentucky, livestock markets, fairs, and animal exhibition venues are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This revision will require fewer test requirements for some species and the entry requirements are updated to reflect the current status of regulated diseases. This revision may require nominal expenditures by the producer to provide approved animal identification for animal movement. This revision may require livestock markets to enhance their ability to identify and record the movement of animals through their facility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be nominal costs to producers and some infrastructure costs to marketing entities. These costs are indeterminable at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits will be to protect the state's livestock industry from serious animal disease outbreaks that may decrease all animal movement and business.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No expense.

(b) On a continuing basis: No expense.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund to KDA for personnel.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No new fees

involved

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any new fees, nor does it change previous fees.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-).

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE
Livestock Sanitation
(Amendments)

302 KAR 20:065. Sale and exhibition of Kentucky origin animals [~~livestock~~] in Kentucky.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 246.295, 257.030, 257.315, 257.380

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.020(3) requires the board to prevent, control, and eradicate any communicable disease of animals [~~livestock~~]. KRS 257.030(2) authorizes the board to establish necessary quarantines and other measures to control the movement of animals [~~livestock~~] into, through, or within Kentucky. This administrative regulation establishes health requirements for the sale, movement, and exhibition of Kentucky animals within [~~livestock in~~] Kentucky. [~~Sale and exhibition requirements for out-of-state livestock are established in 302 KAR 20:040, Entry into Kentucky.~~]

Section 1. General Requirements. (1) All animals moving within Kentucky shall be subject to the requirements provided in 302 KAR 20:020.

(2)[~~(a)~~] All animals offered for sale [~~or exhibition in the Commonwealth~~] shall be accompanied by a Certificate of Veterinary Inspection, CVI, or other official movement document except for exemptions listed under each species section. Examples of an official movement document are a way bill with a permit number and a federal movement form.

(a) A CVI for sale purposes shall be valid for thirty (30) days from the date of issuance;

(b) A CVI written for exhibition purposes shall be void upon change of ownership of the listed animals.

(4) All required tests shall be conducted by a state-federal approved laboratory as defined by 9 C.F.R.

(5) No animal that originated from a quarantined area or quarantined herd shall be transported intrastate within Kentucky unless permitted by OSV on VS Form 1-27 or other written agreement from OSV. [~~unless otherwise provided in 302 KAR 20:070 and this administrative regulation.~~

~~(b) A Certificate of Veterinary Inspection shall be void:~~

~~1. 150 days after issuance for purposes of exhibition; and~~

~~2. Thirty (30) days after issuance for purposes of sale.~~

~~(2) All required testing shall be conducted by a state and federally approved laboratory as defined by 9 C.F.R. 79.1.~~]

Section 2. Cattle and other Bovine Species. (1) General requirements.

(a) Cattle moving intrastate for sale except as noted in (b) of this section, change of ownership or exhibition purposes shall meet requirements in subsections (2) and (3) of this section.

(b) Cattle moving directly to a state-federal approved stockyard or a recognized slaughtering center shall meet the requirements in subsections (3) and (4) of this section.

(2) Certificate of Veterinary Inspection.

(a) All cattle moving intrastate for sale, exhibition or change of ownership shall be accompanied by a valid CVI that meets the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or 30 days whichever is greater.

(3) Specific diseases

(a) [~~If animals are from an accredited or certified herd, the Certificate of Veterinary Inspection shall document the accreditation and certification number with the date of the last herd test for tuberculosis and brucellosis.~~

~~(b) Cattle infected with warts, ringworm, or any other contagious, infectious, or communicable disease shall not be eligible for sale or exhibition.~~

~~(2)~~] Brucellosis. Testing[~~(a) Sale and exhibition. A test~~] shall not be required for sale or exhibition if one (1) of the following applies.

1. Kentucky has class free status.

2. The animals are moving from a brucellosis certified herd. Herd number and last test date shall be recorded on CVI.

[~~(b) The Certificate of Veterinary Inspection shall document the official animal identification.~~]

(b)[~~(3)~~] Tuberculosis. Testing [~~Sale and exhibition. A test~~] shall not be required for sale or exhibition if one of the following applies:

1. Kentucky has class free status.

2. The animals are from a tuberculosis accredited herd. Herd number and last test date to be recorded on CVI.

(c) Cattle infected with warts, ringworm, or any other communicable disease shall not be eligible for exhibition.

(4) The seller's name and address and premises of origin or PIN shall be provided for cattle moving to a state-federal approved stockyard or directly to a recognized slaughtering center.

[~~Section 3. Performance Bull Testing Program. All animals shall be accompanied by a Certificate of Veterinary Inspection.~~]

Section 3 [~~4.~~] Horses and Other Equine Species. (1) General requirements.

(a) Equine moving intrastate for sale, racing, change of ownership, exhibition or into a public stable, fairgrounds or showgrounds except as noted in paragraphs (b) and (c) of this subsection shall meet requirements in subsection (2) and (3) of this section.

(b) Equine moving directly to a state approved horse sale shall meet requirements in subsection (4) of this section.

(c) Equine moving farm to farm with no change of ownership or to a veterinary facility shall not be required to meet the requirements of subsections (2) and (3) of this section.

(2) Certificate of Veterinary Inspection or Equine Interstate Event Permit.

(a) All equine moving intrastate shall be accompanied by a valid CVI that meets the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the duration of the EIA test certificate not to exceed one (1) year.

(d) An Equine Interstate Event Permit issued within the previous twelve (12) months shall be accepted in lieu of a CVI and EIA test report for exhibition purposes.

(e) A CVI or an Equine Interstate Event Permit shall be void upon change of ownership [; Specific Diseases;]

(3) Equine Infectious Anemia.

(a) Horses and other equidae shall be negative to an USDA approved test, pursuant to 9 C F R 75 4, for EIA within the previous twelve (12) months

(b) Unweaned foals accompanied by their dam are exempt from subsection (3)(a).

(4) Approved Kentucky horse sales (a) Horses and other equidae may move directly to an approved Kentucky horse sale without a CVI or negative EIA test certificate.

(b) Approved Kentucky horse sales shall meet the requirements of 302 KAR 20:260.

(c) All horses and other equidae presented without valid negative EIA test certificates shall have a blood sample drawn for EIA testing by the approved market veterinarian at the seller's expense [~~(1) Sale. All horses and other equidae, except unweaned foals accompanied by their dam, offered for sale, traded, given away, leased, or moved for the purpose of change of ownership shall be negative to an Agar Gel Immunodiffusion (AGID) test or other USDA approved test, pursuant to 9 C.F.R. 75.4, for equine infectious anemia within the previous twelve (12) months. Equine which are offered for sale at a state-federal approved stockyard without proof of a negative test for Equine Infectious Anemia (EIA) within the previous twelve (12) months shall have a blood sample drawn at the stockyard by the approved market veterinarian at the seller's expense.~~

~~(2) Exhibition. All horses and other equidae, except unweaned foals accompanied by their dam, offered for exhibition, including entry into fairgrounds, livestock show grounds, public boarding stables, trail rides, and racing, shall be negative to an AGID test or other USDA approved test for equine infectious anemia within the previous twelve (12) months.~~]

Section 4 [~~5~~] Swine. (1) General requirements

(a) Swine moving intrastate for sale, change of ownership or exhibition shall meet requirements in subsections (2) and (3) of this section.

(b) Swine moving directly to a state-federal approved stockyard or a recognized slaughtering center shall meet the requirements in subsections (3) and (4) of this section.

(c) Swine that shall not be moved for any purpose, except under jurisdiction of the OSV or the USDA APHIS VS:

1. Garbage fed swine; and

2. Wild, captive wild, or feral swine, Sus scrofa per definition, including Russian wild boars and Eurasian wild boars.

(2) Certificate of Veterinary Inspection.

(a) All swine moving intrastate for sale, exhibition or change of ownership shall be accompanied by a valid CVI that meets the criteria in 302 KAR 20:020,Section 1(3)(c) of.

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(3) Specific diseases

(a) [~~All swine shall have an official permanent identification.~~

~~(b) If animals originate from a validated and qualified herd, the Certificate of Veterinary Inspection shall document the herd validation and qualification number with the date of the last herd test for brucellosis and pseudorabies.~~]

[~~(2)~~] Brucellosis. Testing [~~A test~~] shall not be required for sale or exhibition if one (1) of the following apply:

1. Kentucky is a class free state, or

2. The animal is from a validated brucellosis free herd and the validation number and last test date are recorded on CVI

(b)[~~(3)~~] Pseudorabies. Testing [~~Sale or exhibition. A test~~] shall not be required for sale or exhibition if Kentucky maintains a Stage V Pseudorabies status.

(4) Swine moving to a Kentucky state-federal approved stockyard or directly to a recognized slaughtering center shall have the following:

1. Official identification; and

2. The seller's name and address and premises of origin address or PIN [~~The State Veterinarian may require an official pseudorabies blood test if the animal's state and premises of origin cannot be documented.~~

~~(4) Tuberculosis. For sale and exhibition. A test shall not be required for sale or exhibition.~~]

Section 5.[~~6.~~] Sheep and Other Ovine Species. (1) General requirements.

(a) Sheep and lambs for sale, except as noted in (b) of this section, exhibition, breeding or feeding purposes shall meet requirements in subsections (2) and (3) of this section.

(b) Sheep moved directly to a state-federal approved stockyard, graded sale or telemarketing sale or a recognized slaughtering center shall meet requirements in subsections (3) and (4) of this section.

(c) Sheep that require a CVI for movement shall be identified with an official USDA Scrapie Program identification tag or other official identification method

(2) Certificate of Veterinary Inspection.

(a) All sheep and lambs moving intrastate for sale, exhibition, breeding or feeding purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership or sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(3) Specific diseases.

(a)[~~All sheep and lambs shall be officially identified by ear or flank tattoo, official ear tag or by microchip and entered on a Certificate of Veterinary Inspection. For sale and exhibition in Kentucky, all breeding sheep shall originate from a consistent state meeting the requirements of USDA Voluntary Scrapie Flock Certification Program in 9 C.F.R. 79.1, and shall be identified with an official USDA Scrapie Program identification tag. Market lambs under the age of eighteen (18) months shall be identified as documented on the Certificate of Veterinary Inspection.~~

~~(b) Sheep and lambs infected with any contagious, infectious or communicable disease shall not be eligible for sale or exhibition.~~

~~(2)~~] Scrapie.

[~~(a) Sale.~~

~~1.~~] Sheep and lambs [~~shall not be consigned~~] that originate from known trace, source or infected Scrapie flocks as determined by the [~~a flock listed as a scrapie affected or surveillance flock by~~] USDA APHIS VS [~~Animal Plant Health Inspection Service, Veterinary Services~~] in compliance with 9 C.F.R. Part 79 shall not be allowed movement except as permitted by USDA APHIS VS or the OSV.

(b)[~~2. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program shall be eligible for sale. A Certificate of Veterinary Inspection shall document that the flock is in compliance with the USDA Voluntary Scrapie Flock Certification Program.~~

~~(b) Exhibition. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program shall be eligible for exhibition. A Certificate of Veterinary Inspection shall document that the flock is in compliance with the USDA Voluntary Scrapie Flock Certification Program.~~]

[~~(3)~~] Scabies. Sheep affected with or exposed to scabies or from an area quarantined because of scabies shall not be eligible for sale or exhibition.

(c)[~~All sheep or lambs for breeding and feeding purposes consigned from a farm, ranch, or like premises shall be accompanied by a Certificate of Veterinary Inspection indicating the sheep and lambs originated directly and immediately from an official scabies~~

~~eradicated-free area.~~]

[~~(4)~~] Sore mouth (Contagious Ecthyma) Any sheep or lambs showing lesions of contagious ecthyma [~~exythma~~] shall not be eligible for exhibition or sale.

(4) Other movements

(a) Sheep and lambs moving to state-federal approved stockyards, graded sales, telemarketing sales or directly to a recognized slaughtering center shall

1. Be identified in accordance with 9 C F R Part 79

2. The seller's name and address and premises of origin address or PIN

Section 6.[~~7.~~] Goats and Other Caprine Species. (1) General requirements

(a) Goats moving for sale, except as noted in paragraph (b) of this subsection, exhibition, breeding or feeding purposes shall meet requirements in subsections (2) and (3) of this section

(b) Goats moving directly to a state-federal approved stockyard, graded sale or telemarketing sale or a recognized slaughtering center shall meet requirements in subsections (3) and (4) of this section.

(c) Goats that require a CVI for movement shall be identified with an official USDA Scrapie program identification tag or other official identification method.

(2) Certificate of Veterinary Inspection.

(a) All goats moving intrastate for sale, exhibition, breeding or feeding purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c)

(b) A CVI for change of ownership or sale shall be valid for thirty (30) days

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(3) Specific diseases.

(a) Scrapie. Goats that originate from known trace, source or infected Scrapie flocks as determined by the USDA APHIS VS in compliance with 9 C.F.R. Part 79 shall not be allowed movement except as permitted by USDA APHIS VS or the OSV.

(b) Brucellosis Any goat that originates from a premises that has been infected with or exposed to B melitensis or other Brucella sp. within the previous twelve (12) months shall be negative to a Brucella test within thirty (30) days for sale or exhibition.

(c) Tuberculosis Testing shall not be required for sale or exhibition if Kentucky has class free status.

(d) Goats infected with a communicable disease shall not be eligible for sale or exhibition

(4) Other movements.

(a) Goats moving to state-federal approved stockyards, graded sales, telemarketing sales or directly to a recognized slaughtering center shall:

1. Be identified in accordance with 9 C.F R Part 79

2. The seller's name and address and premises of origin address or PIN [~~(1) Scabies. All goats shall originate from a scabies-free area.~~

~~(2) Scrapie. Goats from a herd under surveillance for scrapie that are known to have been exposed to or that are progeny shall not be eligible for sale or exhibition.~~

~~(3) Brucellosis. Sale or exhibition. Testing shall not be required for sale or exhibition.~~

~~(4) Tuberculosis. Sale or exhibition. Testing shall not be required for sale or exhibition.~~]

Section 7 [~~8.~~] Poultry or Farm Raised Upland Game Birds. (1) General requirements.

(a) Birds five (5) months and older for sale or exhibition purposes shall meet the requirements in subsections (2) and (3) of this section.

(b) Chicks and hatching eggs for sale shall meet the requirements in subsections (2) and (3)(b)

(c) Birds moving to an approved slaughter facility or between a commercial company's facilities shall meet requirements in subsection (4)

(2) Certificate of Veterinary Inspection.

(a) A CVI, Non-NPIP Flock Report or appropriate NPIP certificate with the flock number shall be required for movement and exhibition.

(b) A CVI or Non-NPIP Flock Report will be valid for the remainder of the ninety (90) day S. pullorum test period for intrastate exhibition An NPIP certificate will be valid for one (1) year from the date issued for intrastate exhibition

(c) Official individual identification, leg or wing band, shall be recorded on the CVI or Non-NPIP Flock Report.

(3)[~~Poultry shall be individually identified with an official leg or wing band. The official leg or wing band number shall be recorded on a Certificate of Veterinary Inspection which shall accompany poultry when presented for sale or exhibition.~~

~~(2)~~] Salmonella Pullorum

(a) Birds five (5) months of age and older shall be negative to an official Salmonella pullorum test within ninety (90) days or originate from a NPIP flock. The name of the laboratory conducting the test and test results or the NPIP flock number shall be recorded on a CVI.

(b) Chicks and hatching eggs shall originate from a flock that satisfies the requirements of KRS 257.400.

(4) Other movements.

(a) Commercial poultry moving between company facilities shall maintain a log book or possess a way bill stating the origination of the birds and intended destination with the flock NPIP number

(b) Birds going direct to slaughter must provide the name and address for premises of origin.

Section 8 Ratites. (1) General requirements

(a) Ratites moving for sale or exhibition purposes shall meet requirements in subsections (2) and (3) of this section.

(b) A permit number shall be obtained from OSV prior to the sale of ratites in Kentucky This permit number shall be recorded on the CVI accompanying the animals.

(c) All ratites shall have a permanent official identification

(d) Any ratite with evidence of a communicable disease shall not be eligible for sale or exhibition.

(2) Certificate of Veterinary Inspection.

(a) All ratites moving intrastate for sale or exhibition shall be accompanied by a valid CVI or NPIP certificate that shall meet the criteria in 302 KAR 20 020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for ninety (90) days.

(3) Specific diseases.

(a) Avian Influenza. Ratites shall be negative to an official test as defined by 9 C F R Part 145, within ninety (90) days prior to sale or exhibition or originate from a NPIP AI Clean flock

(b) Salmonella pullorum Ratites shall be negative to an official test as defined by 9 C F R. Part 145, within ninety (90) days prior to sale or exhibition or originate from a NPIP flock

Section 9. Dogs, Cats and Ferrets. General Requirements for exhibition.

(1) All dogs and cats for exhibition shall be accompanied by a CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(2) CVI shall be valid for the duration of the rabies vaccination not to exceed one (1) year.

(3) All dogs, cats and ferrets over four (4) months of age shall be vaccinated against rabies per the "Compendium of Animal Rabies Vaccines" prepared by the National Association of State Public Health Veterinarians, Inc [~~Sale and exhibition. A negative agglutination test shall be required for all poultry within thirty (30) days prior to the date of sale or within 150 days prior to the date of exhibition. A Certificate of Veterinary Inspection shall accompany poultry when presented for sale and exhibition and shall document the laboratory which conducted the test and the test date.~~

~~(3) Chicks and hatching eggs shall originate from a flock that satisfies the requirements of KRS 257.400.~~

~~Section 9. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not origi-~~

~~nate within an area under quarantine for rabies, or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for a three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, Inc., qualifies a dog if it is one (1) year of age when vaccinated, provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish a Certificate of Veterinary Inspection.~~

~~(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Kentucky Cabinet for Health Services, Department for Public Health.~~

~~Section 10. Ratites (Ostrich, Emu, Rhea, Cassowary, Kiwi, etc.). (1) General requirements.~~

~~(a) A permit number shall be obtained prior to the sale of any ratites in Kentucky by calling (502) 564-3956 weekdays between the hours of 8 a.m. – 4:30 p.m.. This permit number shall appear on the Certificate of Veterinary Inspection accompanying the animals.~~

~~(b) All ratites shall have a permanent official identification approved by a state-federal agency.~~

~~(c) Any ratite with evidence of a contagious, infectious, or communicable disease shall not be eligible for sale or exhibition.~~

~~(2) Specific diseases.~~

~~(a) Ratites shall be negative to an official test for Avian influenza, as defined by 9 C.F.R. 145.14, within thirty (30) days prior to sale.~~

~~(b) Ratites shall be negative to an official test for salmonella pullorum, as defined by 9 C.F.R. 145.14, within thirty (30) days prior to sale.~~

~~(c) A veterinarian's statement that ratites are not showing signs of any contagious, infectious, or communicable disease shall accompany the ratites for sale or exhibition.~~

~~(3) Exhibition. Ratites shall be negative to an official test for Avian Influenza and Salmonella within 150 days prior to date of exhibition.]~~

Section 10 ~~[11.]~~ Camelids ~~[(Llamas, Alpacas, Camels, etc.)]~~. (1) General requirements ~~[Brucellosis]~~.

(a) Camelids moving for sale or exhibition shall meet requirements in subsections (2) and (3) of this section.

(b) All camelids shall be identified with an official identification tag or other official identification method.

(2) Certificate of Veterinary Inspection.

(a) All camelids moving intrastate for sale or exhibition shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for change of ownership and sale shall be valid for thirty (30) days.

(c) A CVI for intrastate exhibition shall be valid for the remainder of the calendar year in which it is issued or thirty (30) days whichever is greater.

(3) Specific diseases.

(a) Brucellosis. Testing shall not be required for sale and exhibition if Kentucky has class free status.

(b) Tuberculosis. Testing shall not be required for sale and exhibition if Kentucky has class free status ~~[(a) Camelids six (6) months of age or older shall be negative to an official brucellosis test within 150 days prior to date of exhibition.~~

~~(b) Camelids six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to date of sale.~~

~~(c) Camelids not weaned, when accompanied by their dam, shall be identified and recorded on the dam's Certificate of Veterinary Inspection.~~

~~(2) Tuberculosis.~~

~~(a) Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within 150 days prior to date of exhibition.~~

~~(b) Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within sixty (60) days prior to sale.~~

~~(c) Camelids not weaned, when accompanied by their dam, shall be identified and recorded on the dam's Certificate of Veterinary Inspection.]~~

Section 11 ~~[12.]~~ Cervid ~~[(Deer, Elk, Moose, and All Other Members of the Family Cervidae)]~~. (1) General requirements.

(a) Cervids moving for export, sale or other purposes except as noted in subsection (1)(b) and (1)(d) of this section shall meet requirements in subsections (2) and (3) of this section.

(b) Cervids moving to a recognized slaughtering center or a veterinary clinic shall meet the requirements in subsection (4) of this section.

(c) All cervids shall be identified with an official identification tag or other official identification method.

(d) Cervids moved by wildlife rehabilitators permitted under 301 KAR 2:075 are exempt from this section.

(e) All farm held cervids shall meet the requirements of 302 KAR 20:066.

(2) Certificate of Veterinary Inspection and Movement Permit.

(a) All cervids moving for export, intrastate sale or other purposes shall be accompanied by a valid CVI that shall meet the criteria in 302 KAR 20:020, Section 1(3)(c).

(b) A CVI for sale shall include the following:

1. Consignor's name, address, and the Cervid Chronic Wasting Disease Surveillance and Identification program herd number; and

2. Consignee's name, address, and Cervid Chronic Wasting Disease Surveillance and Identification program herd number.

(c) A CVI for change of ownership or sales will be valid for thirty (30) days.

(d) A permit shall be obtained from OSV prior to the export, sale or other movement of all cervids in Kentucky. The permit number shall be recorded on the CVI.

(3) Specific diseases.

(a) Brucellosis: Cervids six (6) months of age or older:

1. Shall be negative to an official brucellosis test, as defined in 9 C.F.R. Part 78, within thirty (30) days prior to date of sale or

2. Originate from a brucellosis certified herd.

3. Shall be exempt from testing if Kentucky has bovine or cervid brucellosis free status and if brucellosis has not been diagnosed within Kentucky in any class of cervids in the previous five (5) years.

(b) Tuberculosis. Cervids twelve (12) months of age or older:

1. Shall be negative to a single cervical tuberculin (SCT) test within sixty (60) days prior to date of sale or

2. Originate from a tuberculosis accredited herd.

3. Shall be exempt from testing if Kentucky has bovine or cervid tuberculosis free status and if tuberculosis has not been diagnosed within Kentucky in any class of cervids in the previous five (5) years.

(4) Other movement. Cervids from captive cervid premises moving to a recognized slaughtering center or a veterinary clinic shall obtain a movement permit from the OSV prior to movement.

Section 12. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Certificate of Veterinary Inspection Form, Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-72 (Apr. 2005)";

(b) "Equine Only Certificate of Veterinary Inspection Form, Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-73 (Sept. 2006)";

(c) "Small Animal Certificate of Veterinary Inspection Form, Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-74 (Jan. 2006)";

(d) "Equine Infectious Anemia (EIA) Test Form, Kentucky Department of Agriculture, Office of State Veterinarian, KYSV-301 (July 2005)";

(e) "EIA Laboratory Test Form, USDA APHIS VS Form 10-11 (May 2003)";

(f) "Compendium of Animal Rabies Prevention and Control, (2006)";

(g) "Non-NPIP Flock Report, Kentucky Department of Agricul-

ture, Office of State Veterinarian, KYSV-800 (Sept. 2005);

(h) Report of Sales of Hatching Eggs, Chicks and Poults, USDA APHIS VS Form 9-3 (June1998); and

(i) Permit for movement of restricted animals the USDA APHIS VS Form 1-27 (June 1989). [~~(1) Brucellosis.~~

~~(a) Cervids six (6) months of age or older shall be negative to an official brucellosis test, as defined by 9 C.F.R. 78, within 150 days prior to the date of exhibition.~~

~~(b) Cervids six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to the date of sale, except if originated from a certified brucellosis free herd.~~

~~(c) Cervids not weaned, if accompanied by their dam, shall be identified and recorded on the dam's Certificate of Veterinary Inspection.~~

~~(2) Tuberculosis.~~

~~(a) Cervids six (6) months of age or older shall be negative to a Single Cervical Tuberculin (SCT) test within 150 days prior to the date of exhibition.~~

~~(b) Cervids six (6) months of age or older shall be negative to a SCT tuberculin test within sixty (60) days prior to sale, except if originated from an accredited tuberculosis free herd.~~

~~(c) Cervids not weaned, if accompanied by their dam, shall be identified and recorded on the dam's Certificate of Veterinary Inspection.~~

~~Section 13. Intrastate Movement Requirements. All intrastate movements of cervids other than to a state or recognized slaughtering center, shall be accompanied by an intrastate movement Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian. The intrastate movement certificate shall include the following:~~

~~(1) Consignor's name, address, and state veterinarian issued permit number;~~

~~(2) Consignee's name, address, and state veterinarian issued permit number; and~~

~~(3) The permit number to ship, which may be obtained by telephone, issued by the State Veterinarian prior to movement.~~]

RICHIE FARMER, Commissioner

APPROVED BY AGENCY: July 10, 2007

FILED WITH LRC: July 10, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2007, at 10 a.m., at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 23, 2007. Five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert Stout or Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601, phone (502) 564-3956, fax (502) 564-7852.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation defines the requirements for the intrastate movement, sale and exhibition of livestock and poultry.

(b) The necessity of this administrative regulation: This regulation is necessary to prevent introduction of an animal disease, to control and eradicate animal diseases and to protect the livestock economy of the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation explains specific areas of livestock disease monitoring and animal disease control for which the statute gives authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The regulation provides requirements for animal movement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will update current regulations in response to changes in animal health programs and disease prevalence and therefore better serve Kentucky's animal industries.

(b) The necessity of the amendment to this administrative regulation: Program disease status has changed over the years through the joint efforts of state and federal animal health officials. Effective enforcement of regulations requires that they address current situations, concepts and standards. This is vital to the effective control of disease and the efficient movement and marketing of animals into and within the Commonwealth.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 257.030 requires that regulation be promulgated to address specific areas of livestock disease monitoring and animal disease control. The amendment is in response to changes in disease status and animal movement.

(d) How the amendment will assist in the effective administration of the statutes: Regulation of animal movement and disease control must reflect current science-based information and best practice protocols to provide for safe and efficient operation of our animal industries. The amendment is based on this principle and adds requirements where needed and removes unnecessary restrictions.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All livestock producers and exhibitors, livestock markets, fairs, and animal exhibition venues are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: This revision will simplify the necessary actions for livestock producers in regards to the intrastate movement of animals. It will require fewer test requirements for some species and the needed animal movement papers will be valid for a much longer period of time than under the older version. This revision may require nominal expenditures by the producer to provide approved animal identification for animal movement. For animals that do not leave the premises of origin, no new measures are required. This revision may require livestock markets to enhance their ability to identify and record the movement of animals through their facility.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be nominal costs to producers and some infrastructure costs to marketing entities. These costs are indeterminable at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits will be to protect the state's livestock industry from serious animal disease outbreaks that may decrease all animal movement and business. The marketability of Kentucky livestock in other states and countries will increase. Producers, livestock markets and vendors will all benefit from the movement of animals properly identified, allowing for rapid traceback in response to animal disease outbreaks.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No expense

(b) On a continuing basis: No expense

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:
General fund to KDA for personnel

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regula-

tion, if new, or by the change if it is an amendment: No new fees involved.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:
This regulation does not establish any new fees, nor does it change previous fees.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Motor Carriers
(Amendment)

601 KAR 1:025. Transporting hazardous materials by air or highway.

RELATES TO: KRS 174.400-174.425, 49 C.F.R. 107, 130, 171-173, 175, 177, 178, 180

STATUTORY AUTHORITY: KRS 174.410(2), 49 C.F.R. Parts 130, 171-173, 175, 177, 178, 180

NECESSITY, FUNCTION, AND CONFORMITY: KRS 174.410(2) provides that the Secretary of the Transportation Cabinet, in consultation with the Secretary of the Environmental and Public [~~Natural Resources and Environmental~~] Protection Cabinet and the Secretary of the Cabinet [~~for Human Resources (now Health Services)~~], shall adopt by reference or in its entirety, the federal hazardous materials transportation regulation, 49 C.F.R (1978), as amended, to effectively carry out the intent of KRS 174.400 through 174.425 relating to the transportation of hazardous materials by air or highway. This administrative regulation is the result of that directive.

Section 1. [~~(1)~~] The following hazardous materials transportation regulations adopted and issued by the United States Department of Transportation shall govern the transportation of hazardous materials within Kentucky if the transportation of hazardous material is by air or highway [~~and are hereby adopted without change~~]:

(1) [~~(a)~~] 49 C.F.R. Part 107[~~, effective October 1, 2004~~]. Part 107 sets forth the requirements for a national registration of the transporters of hazardous materials.[~~:~~]

(2) [~~(b)~~] 49 C.F.R. Part 130 [~~effective October 1, 2004~~]. Part 130 sets forth general information, regulations and definitions applicable to oil spill prevention and response plans;

(3) [~~(c)~~] 49 C.F.R. Part 171 [~~effective October 1, 2004~~]. Part 171 sets forth general information, regulations and definitions applicable to all hazardous materials transportation;

(4) [~~(d)~~] 49 C.F.R. Part 172 [~~effective October 1, 2004~~]. Part 172 lists and classifies those materials which the United States Department of Transportation has designated as hazardous materials for purposes of transportation and prescribes the requirements for the following:

(a) [~~1.~~] Shipping papers;

(b) [~~2.~~] Package marking; and

(c) [~~3.~~] Labeling and transport vehicle placarding applicable to the shipment and transportation of those hazardous materials;

(5) [~~(e)~~] 49 C.F.R. Part 173 [~~effective October 1, 2004~~] Part 173 sets forth the general requirements which shippers are required to meet for shipments and packaging;

(6) [~~(f)~~] 49 C.F.R. Part 175 [~~effective October 1, 2004~~]. Part 175 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to aircraft operators transporting hazardous materials aboard, attached to or suspended from civil aircraft;

(7) [~~(g)~~] 49 C.F.R. Part 177, [~~effective October 1, 2004~~]. Part 177 includes requirements in addition to those contained in Parts 171, 172, and 173 which are applicable to private contract or common motor carriers transporting hazardous materials on public highways;

(8) [~~(h)~~] 49 C.F.R. Part 178 [~~effective October 1, 2004~~]. Part 178 prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials; and

(9) [~~(i)~~] 49 C.F.R. Part 180[~~, effective October 1, 2004~~]. Part 180 prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and any other function having an effect on the continuing qualification and use of a packaging used to transport hazardous materials.

[~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright laws, at the Department of Kentucky Vehicle Enforcement, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4.30 p.m.~~]

BILL NIGHBERT, Secretary
APPROVED BY AGENCY: July 11, 2007
FILED WITH LRC: July 12, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed administrative regulation shall be held on August 22, 2007, at 10 a.m. local time at the Transportation Cabinet, Transportation Cabinet Office Building, Hearing Room C121, 200 Mero Street, Frankfort, Kentucky 40622. Individuals interested in being heard at this hearing shall notify this agency in writing five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing five working days prior to the hearing or send written comments on the proposed administrative regulation by close of business (insert last day of month) to:

CONTACT PERSON: Dana C. Fugazzi, Staff Attorney, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Dana C. Fugazzi

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

tive regulation adopts the federal Hazardous Materials Transportation regulations for the transportation of hazardous materials in Kentucky by air or highway.

(b) The necessity of this administrative regulation: KRS 174.410(2) requires the Secretary to adopt the federal Hazardous Materials Transportation Regulations established in 49 C F R. (1978), as amended.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation adopts the federal Hazardous Materials Transportation regulations for the transportation of hazardous materials in Kentucky by air or highway.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation adopts the federal Hazardous Materials Transportation regulations for the transportation of hazardous materials in Kentucky by air or highway.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments delete outdated edition dates of the federal regulations.

(b) The necessity of the amendment to this administrative regulation: To ensure that the current federal regulations are also effective on the state level.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 174.410(2) requires the Secretary to adopt the federal Hazardous Materials Transportation Regulations established in 49 C.F.R. (1978), as amended.

(d) How the amendment will assist in the effective administration of the statutes: The amendments delete outdated edition dates of the federal regulations to ensure that the current federal standards are also effective on the state level.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect all transporters of hazardous materials by highway or air in Kentucky and will indirectly benefit all those who live in the Commonwealth in light of the serious potential for hazard if these procedures are not followed. There is no data available to determine how many trucking companies in Kentucky transport hazardous materials.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Interstate carriers are already subject to these federal provisions and this should not have any additional impact on their day-to-day operations. There are no additional requirements.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no additional costs.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Compliance with federal hazardous materials transportation regulations helps maintain safety on roads and highways and should positively impact motorists sharing the roadways with transporters of hazardous materials.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No known cost.

(b) On a continuing basis: There is on-going cost related to administration of the hazardous material program and enforcement of the regulations through Kentucky Vehicle Enforcement. These amendments should not increase the current cost for these programs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Motor Carrier Safety Assistance Program Grant.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The Cabinet has not increased fees and does not anticipate a need for increased funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No.

(9) TIERING: Is tiering applied? Tiering is applied to the extent that the restrictions and requirements are different depending on the type of hazardous material being transported and the potential hazard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Transportation Cabinet, Department of Vehicle Regulation; Justice and Public Safety Cabinet, Kentucky Vehicle Enforcement.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 174.410(2), 49 C.F.R. Parts 130, 171-173, 175, 177, 178, 180

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? There is on-going cost related to administration of the hazardous material program and enforcement of the regulations through Kentucky Vehicle Enforcement. These amendments should not increase the current cost for these programs.

(d) How much will it cost to administer this program for subsequent years? There is on-going cost related to administration of the hazardous material program and enforcement of the regulations through Kentucky Vehicle Enforcement. These amendments should not increase the current cost for these programs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 49 C.F.R. Part 350 encourages each state to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. A coordinated program of inspection and enforcement activities is needed to avoid duplication of effort, to promote compliance with uniform safety requirements by all types of motor carriers, and to provide a basis for sanctioning carriers for poor safety performance. The state may apply for a Motor Carrier Safety Assistance Program Grant to implement this federal policy. To be eligible for such a grant the state must adopt and assume responsibility for enforcement of the federal motor carrier safety regulations found in 49 C.F.R Parts 107, 130, 171-173, 177, 178, and 180.

2. State compliance standards. Kentucky has been a participant in the Motor Carrier Safety Assistance Program since its inception in the 1980's. The Transportation Cabinet has adopted all of the federal regulations contained in 49 C.F.R. Parts 107, 130, 171-173, 177, 178, and 180.

3. Minimum or uniform standards contained in the federal mandate. These federal regulations contain the following minimum standards:

(a) The listing of the materials and their minimum quantities which require the a material to be treated as hazardous material;

(b) Establishes the emergency response information requirements for each transporter of a hazardous material;

(c) Defines the general requirements for shipping and packaging of each type of hazardous material;

(d) Defines the unacceptable hazardous materials shipments on a highway;

(e) Establishes requirements for the transportation of hazardous materials that are unique to highway transportation;

(f) Establishes shipping container specifications for the transportation of hazardous materials;

(g) Establishes the qualification and maintenance requirements for cargo tanks which are used in the transportation of hazardous materials;

(h) Establishes an oil spill prevention and response plan for all transporters of oils.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

EDUCATION CABINET
Department for Libraries and Archives
Public Records Division
(Amendment)

725 KAR 1:030. Scheduling public records for retention and disposal; procedures [~~Disposal or destruction of public records; procedure~~].

RELATES TO: KRS Chapter 171

STATUTORY AUTHORITY: KRS 171.450, 171.580

NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(a) and (b) requires the department to establish procedures for the compilation and submission to the department of lists and schedules for the disposal or destruction of public records authorized for disposal or destruction. KRS 171.580 authorizes the department to accept for deposit in the State Archives the records of any state or local agency that are determined by the department to have sufficient historical value to warrant their continued preservation. This administrative regulation establishes uniform procedures for the scheduling of public records for retention and disposal and for the uniform destruction of public records.

Section 1. State and local agencies shall follow the procedures for scheduling public records for retention and disposal described in Records Retention Scheduling: A Procedural Guide.

Section 2. State and local agencies shall follow the procedures for disposing of eligible public records described in Destruction of Public Records: A Procedural Guide.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Records Retention Scheduling: A Procedural Guide", 2007; and

(b) "Destruction of Public Records: A Procedural Guide", 2007.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. [~~Each constitutional, statutory, and executive authority of state and local government shall dispose of records as outlined in "State Records Retention and Disposal Schedules," a system developed by the Public Records Division, unless otherwise provided for in this administrative regulation.~~

~~Section 2. Authorization for the destruction of public records may be given in two (2) ways. It may be as listed in the unit State Records Retention and Disposal Schedule or it may be requested in writing by the agency for a specific request of an emergency nature. Authorization may also be given for the disposal of records for agencies pending completion of Records Retention and Disposal Schedules for their unit. Requests for the disposal or destruction of records must be submitted in writing by the agency head to the Director, Public Records Division, who will submit the request to the State Librarian for approval. No public record may be destroyed or disposed of without the final signature of approval of the State Librarian, Chairman of the State Archives and Records Commission. The State Librarian may designate the Director, Public Records Division, to approve disposal requests provided they are presented at the next commission meeting.~~

~~Section 3. No public record may be transferred from a state or local unit of government to another state or local unit of government or to a nonpublic agency unless provided for in the Kentucky Revised Statutes or unless the removal is approved by the State Librarian, who is also the Director of the Department for Libraries and Archives.~~]

WAYNE ONKST, State Librarian and Commissioner

APPROVED BY AGENCY: July 12, 2007

FILED WITH LRC: July 13, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2007, at 9 a.m., at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard N. Belding, P. O. Box 537, Frankfort, Kentucky 40602, phone (502) 564-8300, ext. 252, fax (502) 564-5773.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person. Richard N. Belding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes uniform procedures for the scheduling of public records for retention and disposal and for the uniform destruction of public records, and furnishes guidance to public agencies related to their responsibilities in these areas.

(b) The necessity of this administrative regulation: KRS 171.450 provides that the department shall enforce the provisions of KRS 171.410-.740 by appropriate rules and regulations. KRS 171.450(1)(a) and (b) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction. KRS 171.580 authorizes the department to accept for deposit in the State Archives the records of any state or local agency that are determined by the department to have sufficient historical value to warrant their continued preservation. This regulation ensures that state agencies have the guidance they need to meet the requirements of these statutes.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450(1)(a) and (b) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction. This regulation sets out those procedures.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation currently facilitates the disposal or destruction of

public records by providing guidance to public agencies in meeting their responsibilities to dispose of records based on decisions made by the State Archives and Records Commission and documented on approved records retention schedules.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will provide specific guidance to public agencies on the scheduling of records for retention and disposal and more comprehensive guidance to those agencies on authorized disposal procedures for the destruction of eligible public records, in all formats.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is in serious need of amendment to make certain that its terms also address the procedures by which agencies obtain permission to dispose of records through approved records retention schedules, as well as address the authorized destruction of public records created in a wide range of media. As an increasing number of state and local government agencies create and use records in digital formats as an economical and efficient means of conducting business and distributing information, it is imperative that this regulation be amended to respond to these new formats and ensure that agencies have the guidance they need to comply with the requirements of the statute.

(c) How the amendment conforms to the content of the authorizing statutes: The department is directed by KRS 171.450 to enforce the provisions of KRS 171.450 and 171.580 by appropriate rules and regulations, and this amendment ensures that the terms of this administrative regulation respond to the need for appropriate retention and disposal of public agency records, and that state and local government agencies are able to meet additional challenges related to disposing of records maintained in electronic formats.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will address retention and disposal of public agency records, regardless of format, and ensure that the regulation provides guidance and direction to state and local government agencies so that they can meet the requirements of KRS 171.450 and 171.580, regardless of the formats of their records.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All public agencies are affected by this regulation, as all have a responsibility to dispose of records according to decisions of the State Archives and Records Commission.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added under this amendment to those already existing for public agencies.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added under this amendment to those already existing for public agencies.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies that comply with this regulation will improve efficiency and productivity, control the creation and growth of records, support better decision making, recognize cost savings from reduced records storage costs, manage risk more effectively, protect business continuity, and preserve corporate memory.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional costs for agencies to implement this amendment. This amendment merely provides greater procedural guidance to agencies for activities which they are undertaking already.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The activities involved in the amendment are already undertaken by public agencies; the regulation is only being amended to provide more detailed guidance and to respond to the changing environment in which recordkeeping and records disposal occurs. Over the years, the department has regularly advised agencies of their responsibilities in this area. It will continue to rely on this approach to secure compliance with the terms of the regulation and to persuade agencies that it is in their continuing self interest to help ensure timely disposal of obsolete records and the preservation and continued accessibility of their essential documentation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No required increase is projected.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish or increase, directly or indirectly, any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government agencies are required to undertake the activities affected by this amendment.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.680 requires that the state and local agency heads establish and maintain active, continuing programs for the economical and efficient management of the records of their agencies, including "promotion of the maintenance and security of records deemed appropriate for preservation, and facilitation of the segregation and disposal of records of temporary value."

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated because of this amendment.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues generated because of this amendment.

(c) How much will it cost to administer this program for the first year? There will be no additional costs generated because of this amendment.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs generated because of this amendment.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): $0.00
Expenditures (+/-).$0.00
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:545. ICARE Program employer eligibility, application process, and requirements.

RELATES TO: 2006 Ky. Acts ch. 252, Part XXIII, secs.1-8, 13,

22

STATUTORY AUTHORITY: KRS 304.2-110(1), 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and 1(3), 2(5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director of insurance to promulgate administrative regulations necessary for or as an aid to the effectuation of any provisions of the Kentucky Insurance Code as defined in KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and [1](3) require the office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. This administrative regulation establishes the application, appeal process, annual review, health care incentive payment procedures, and eligibility criteria for employers in the ICARE Program.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Complete ICARE Program application" means the ICARE Program application, ICARE-APP-1, with all fields completed and all required attachments, including:

(a) Documentation verifying that the employer group's average annual salary is 300% of the federal poverty level or below, which may include:

1. Employers quarterly unemployment tax statement; or

2. Payroll register;

(b) Documentation supporting coverage of the employer group under a qualified health benefit plan;

(c) A copy of the employer's application or renewal information for coverage to the insurer;

(d) Employee ICARE Program high-cost condition certification, if applicable, and

(e) Any additional attachments, if applicable.

(3) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(4) "Eligible employer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2).

(5) "Federal poverty level" means a standard of income for an individual who resides in one (1) of the forty-eight (48) contiguous states which:

(a) Is issued annually by the United States Department of Health and Human Services;

(b) Is published annually in the Federal Register; and

(c) Accounts for the previous year's price increases as measured by the consumer price index.

(6) "Full time employee" means an employee who works at least twenty-five (25) hours per week.

(7) "Full time equivalent" means a number that equals the total hours worked per week by part time employees divided by twenty-five (25).

(8) "Health care incentive payment" means a payment as established in 2006 Ky. Acts ch. 252, Part XXIII, secs. 2(3) and 4(1).

(9)[(7)] "Health benefit plan" is defined in KRS 304.17A-005(22).

(10)[(8)] "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

(11)[(9)] "ICARE Program high-cost condition" means a high-cost condition as:

(a) Defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(5); and

(b) Established in 806 KAR 17:540.

(12)[(10)] "ICARE Program participating employer" means an eligible employer who is enrolled in the ICARE Program.

(13)[(11)] "ICARE Program participating insurer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(6).

(14)[(12)] "ICARE Program year" means a one (1) year period of time beginning on an eligible employer's enrollment date in the ICARE Program.

(15)[(13)] "Insurer" is defined in KRS 304.17A-005(27).

(16)[(14)] "Office" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(7) and KRS 304.1-050(2).

~~(17)[(15) "Owner" means an individual with an ownership interest in the business.~~

~~(16)~~] "Qualified health benefit plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(8).

Section 2. Employer Eligibility. (1) To determine the number of employees of an employer pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2), the office shall consider:

(a) Full time employees; and

(b) Full time equivalents rounded to the nearest whole number. [~~Individuals currently employed by the employer; and~~

~~(b) Individuals with an ownership interest.~~]

(2) The average annual salary of the employer group shall not exceed 300% of the most current federal poverty level for a family of three (3) [~~an individual~~]. To determine the average annual salary of the employer group pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(4), the office shall:

(a) Calculate the sum of the annual gross salaries of all eligible employees, excluding the salary of any employee:

1. With an ownership interest in the business;

2. Who is a Medicare-eligible employee;

3. Who has attained age sixty-five (65); or

4. Who does not meet eligibility requirements for participation in the employer-sponsored health benefit plan established by the employer and insurer; and

(b) Divide the sum calculated in paragraph (a) of this subsection by the total number of employees whose salaries were used in the calculation established in paragraph (a) of this subsection.

(3) An eligible employer shall pay fifty (50) percent or more of the average single premium cost of qualified health benefit plan coverage for each eligible employee.

(4) An eligible employer shall have at least one (1) eligible employee who is not an owner of [~~without an ownership interest in~~] the business.

Section 3. Application for Participation in the ICARE Program. (1) An eligible employer who desires to participate in the ICARE Program and:

(a) Who has not provided employer-sponsored health benefit plan coverage to its employees within the previous twelve (12) months, shall submit a complete ICARE Program application within 120 [~~thirty-one (31)~~] days of receiving notice of approval for coverage under a qualified health benefit plan,

(b) Who currently provides employer-sponsored health benefit plan coverage to its employees under a qualified health benefit plan and has an eligible employee with a diagnosed ICARE high-cost condition, shall submit a complete ICARE Program application at any time; or

(c) Who has been terminated from the ICARE Program for any reason other than material misrepresentation or fraud, shall submit a complete ICARE Program application no earlier than sixty (60) days prior to the anniversary of the employer's previous ICARE Program year.

(2) A Kentucky licensed agent acting on behalf of an ICARE Program participating insurer shall assist in the submission of an application for the ICARE Program by:

(a) Verifying that the employer has completed and submitted all required information to support eligibility for the ICARE Program;

(b) Completing section 3 of the ICARE Program application of the employer; and

(c) If applicable:

1. Collecting employee ICARE Program high-cost condition certifications from employees, as identified in the ICARE Program application [~~from employees~~]; and

2. Protecting personal health information as established in subparagraph 1 of this paragraph pursuant to 806 KAR 3.210 through 806 KAR 3:230.

Section 4. Application Process. (1) Within sixty (60) days of receiving a complete ICARE Program application, the office shall make a determination of the employer's eligibility for the ICARE Program and provide written or electronic notification to the em-

ployer regarding eligibility.

(2) Within sixty (60) days of receiving an incomplete ICARE Program application, the office shall provide the employer with a written or electronic notification of.

(a) Ineligibility of the employer, if the application includes information which makes an employer ineligible for the ICARE Program; or

(b) Any [What] information that is missing or incomplete.

(3) If an employer receives notification of ineligibility for the ICARE Program, the employer may submit within thirty (30) days from the date of the notification a written request to the office for reconsideration in accordance with Section 8 of this administrative regulation.

(4) Upon approval of ICARE Program eligibility by the office under a program eligibility category as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(3), an eligible employer shall not be allowed to reapply to the ICARE Program under a different program eligibility category.

Section 5. Changes in Application Information. An ICARE Program participating employer shall provide written notification of any change in ICARE Program application information to the office within thirty (30) days of the date of the change.

Section 6. Renewal of ICARE Program Participation. (1) At least sixty (60) days prior to the ICARE Program year renewal date, the office shall send a renewal notification to an ICARE Program participating employer.

(2) At least thirty (30) days prior to the ICARE Program year renewal date, an ICARE Program participating employer who desires continued participation in the ICARE Program shall submit to the office:

(a) A written request for renewal of ICARE Program participation; and

(b) Documentation to support eligibility as established in Section 2 of this administrative regulation and 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8.

(3) Within thirty (30) days of receiving a request for renewal, the office shall make a determination of continued eligibility for a subsequent ICARE Program year and notify the ICARE Program participating employer of the determination.

Section 7. Termination of ICARE Program Participation. (1) An ICARE Program participating employer shall be terminated from participation in the ICARE Program if:

(a) The office determines that the employer ceases to meet an eligibility requirement as established in Section 2 of this administrative regulation or 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8:

1. Upon completion of an annual review for the ICARE Program year reviewed; or

2. Upon review of a request for renewal of ICARE Program Participation;

(b) The employer group's qualified health benefit plan coverage is terminated or not renewed pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(5);

(c) The employer or any employee of the employer group performs an act or practice that constitutes fraud or intentionally misrepresents a material fact in the ICARE Program application [to the ICARE Program];

(d) The employer requests termination from the ICARE Program;

(e) The employer ceases business operations in Kentucky; or

(f) The employer fails to cooperate in an annual review as described in Section 10 of the administrative regulation.

(2) Prior to terminating an ICARE Program participating employer, the office shall provide written notification to the employer, which shall include:

(a) The reason for termination as identified in subsection (1) of this section;

(b) The termination date, which shall be:

1. If terminated for fraud or misrepresentation, the date of the written notification; or

2. If terminated for a reason other than fraud or misrepresentation, no less than thirty (30) days from the date of the written notification, and

(c) Instructions for filing an appeal if dissatisfied with the termination.

Section 8. Reconsideration Requests and Appeals. (1) Within thirty (30) days of receiving notification of a determination of ineligibility pursuant to Section 4 or 6 of this administrative regulation or termination by the office pursuant to Section 7 of this administrative regulation, an employer may request a reconsideration of the determination of ineligibility or termination in writing and shall provide the basis for reconsideration, including any new relevant information.

(2) The office shall provide written notification of its determination to the employer within sixty (60) days of receipt of a request for reconsideration from an employer.

(3) Within sixty (60) days of receiving the office's determination on reconsideration, the employer may appeal by filing a written application for an administrative hearing in accordance with KRS 304.2-310.

Section 9. ICARE Program Health Care Incentive Payment. (1) If confirmation of premium payment by the ICARE Program participating employer is included in the report required by 806 KAR 17:555, Section 5(4), a health care incentive payment shall be issued to the employer for each calendar month beginning with the month of enrollment of the employer in the ICARE Program.

(2) The office shall issue a health care incentive payment to an ICARE Program participating employer for each month in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1) for eligible employees enrolled in a qualified health benefit plan not to exceed the number of employees approved as eligible employees by the office based on the employer's ICARE Program application or ICARE Program renewal.

(3) The total amount of the monthly health care incentive payment provided to an employer may vary during the ICARE Program year based upon the number of eligible employees enrolled in the qualified health benefit plan as reported by the ICARE Program participating insurer.

(4) If an ICARE Program participating employer is terminated from the ICARE Program, the employer shall not be eligible for a monthly health care incentive payment following the effective date of termination for months remaining after the termination.

(5) If an ICARE Program participating employer is terminated from the ICARE Program due to fraud or material misrepresentation, the employer shall refund to the office all health care incentive payments received by the employer for the period of ineligibility determined by the office.

(6) Upon re-enrollment of an employer in the ICARE Program pursuant to Section 3(1)(c) of this administrative regulation, the employer shall receive a health care incentive payment amount that is equal to the health care incentive payment that the employer would have received at the time of renewal in accordance with 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1).

Section 10. Annual Review. The office may make or cause to be made an annual review of the books and records of an ICARE Program participating employer, insurer, or agent to ensure compliance with:

(1) 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8, 806 KAR 17:540, 806 KAR 17:555 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 11. Response to Office Inquiry. If an employer receives an inquiry from the office relating to the eligible employer's participation or application in the ICARE Program, the eligible employer shall respond within fifteen (15) business days.

Section 12. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on July 1, 2007.

Section 13. Incorporation by Reference. (1) "ICARE-APP-1", (6/2007) [(12/2006)], is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4 30 p m. Forms may also be obtained on the office Web site at http://doi ppr.ky.gov/kentucky/.

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: June 20, 2007
FILED WITH LRC: June 29, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on August 23, 2007 at 9 a.m. Eastern Time at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2007, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist II, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the application appeals process, annual review, health care incentive payment procedures, and eligibility criteria for employers wishing to participate in the Insurance Coverage Affordability and Relief to Small Employers (ICARE) Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with 2006 Ky. Acts ch. 252, Part XXIII secs. 1-8 in creating administrative regulations to further clarify and establish the various processes for participation in the ICARE Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 304 2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office of Insurance to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing eligibility requirements, ICARE Program application, enrollment and appeal processes, annual review and payment of health care incentives.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment provides definitions for "full time employee" and "full time equivalents", expands the timeframe for a previously uninsured group to submit an application, changes the family size for consideration in an employer groups salary calculation, makes conforming or technical changes to the regulation required under KRS Chapter 13A, and provides a future effective date for requirements, implementation, and enforcement.

(b) The necessity of the amendment to this administrative regulation: In order to limit exposure to the high cost of health care in this state, protect human health by offering more affordable health insurance coverage for employees of small group employers in Kentucky and remove some of the barriers to ICARE Program eligibility, it is necessary to promulgate this regulation and clarify requirements for enrollment in this program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office of Insurance to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." This amendment to the administrative regulation and material incorporated by reference is conforming with authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation and material incorporated by reference will assist in the effective administration of the statutes by clarifying the eligibility requirements, ICARE Program application, and salary calculation process pursuant to recommendations received during the initial months of ICARE Program operation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 40,716 Kentucky licensed health insurance agents who assist employers of small business to obtain health insurance coverage. Approximately 4,000 small business employers with 20,000 employees may be eligible for the ICARE Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment; including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Agents assisting employers will be required to complete and submit the incorporated ICARE Program application and other required documentation within the prescribed timeframes. Employees with high-cost conditions will be required to complete the ICARE Program High-Cost Condition Certification, which is part of the ICARE Program application. Additionally, an ICARE Program participating employer will be required to notify the Office of Insurance of any changes in the employer's application during the ICARE Program year.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): It is anticipated that costs associated with submitting an ICARE Program application and notifying the Office of Insurance of any changes will be minimal.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agents who comply with the requirements of this administrative regulation will be able to assist small group employers who are eligible for obtaining health care incentive payments that may defray some of the cost of health insurance. Employers of small groups that meet and comply with the requirements of this administrative regulation may participate in the ICARE Program and receive a monthly health care incentive payment for each eligible employee.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Costs of implementing this administrative regulation on an initial basis are projected to be $145,670 for the Office of Insurance. Twenty million dollars have been allocated from the General Fund for the ICARE Program.

(b) On a continuing basis: Costs of implementing this administrative regulation on a continuing basis are projected to be $161,550 for the Office of Insurance. Twenty million dollars have been allocated from the general fund for the ICARE Program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance. Twenty million dollars have been allocated from the general fund to administer the ICARE Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly establish any fees.

(9) TIERING: Is tiering applied? (No. Tiering is not applied because this administrative regulation applies equally to all employers who wish to qualify for the ICARE Program. Furthermore, all Kentucky licensed health insurance agents who assist employers with the ICARE Program application will be required to comply with this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Office of Insurance

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, secs. 1(2) and (3) requires the Office to establish by administrative regulation eligibility requirements for employers and employees to qualify for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program."

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenue for state government will be generated as a result of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenue for state government will be generated as a result of this administrative regulation.

(c) How much will it cost to administer this program for the first year? Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, on an initial basis (fiscal year 2006-07) are estimated to be $145,670 for the Office of Insurance. An appropriation of 20 million dollars from the General Fund will fund the program for two years.

(d) How much will it cost to administer this program for subsequent years? Costs of implementing this administrative regulation, which establishes the application and other components of the ICARE Program, are estimated to be $161,550 for the Office of Insurance for fiscal year 2007-08. An appropriation of 20 million dollars from the General Fund will fund the program for two years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Office of Insurance
Division of Health Insurance Policy and Managed Care
(Amendment)

806 KAR 17:555. ICARE Program requirements.

RELATES TO: KRS 304 14-120, 304.14-430 -304.14-450, 304.17A-095 -304.17A-0954, 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, 13, 22, 42 U.S C. sec. 1396e

STATUTORY AUTHORITY: KRS 304.2-110(1), 2006 Ky. Acts ch.252, Part XXIII, secs. 2(5) and 8(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code as defined in KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the office to establish guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program. 2006 Ky. Acts ch. 252, Part XXIII, sec. 8(1) requires an insurer which offers a health benefit plan to disclose the availability of a health insurance purchasing program as authorized in 42 U.S.C. sec. 1396e to eligible employer groups and the Insurance Coverage, Affordability and Relief to Small Employers Program. This administrative regulation establishes requirements for ICARE Program participating insurers, qualified health benefit plans, disclosure of information, data reporting, and annual review by the office.

Section 1. Definitions. (1) "Agent" is defined in KRS 304.9-020(1).

(2) "Basic health benefit plan" is defined in KRS 304.17A-005(4).

(3) "Consumer-driven health plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(1).

(4) "Eligible employee" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(3).

(5) "Eligible employer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(2).

(6) "Enriched health benefit plan" means a health benefit plan which:

(a) Is not a basic or consumer-driven health benefit plan; and

(b) Includes all benefits established in KRS Chapter 304 subtitle 17A.

(7) "Health benefit plan" is defined in KRS 304.17A-005(22).

(8) "Health care incentive payment" means a payment as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1).

(9) "Health risk assessment" is defined 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(4).

(10) "ICARE Program" means the Insurance Coverage, Affordability and Relief to Small Employers Program as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(1).

(11) "ICARE Program participating insurer" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(6).

(12) "ICARE Program year" means a one (1) year period of time beginning on an employer's enrollment date in the ICARE

Program.

(13) "Office" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(7).

(14) "Qualified health benefit plan" is defined in 2006 Ky. Acts ch. 252, Part XXIII, sec. 1(8)

(15) "Small group" is defined in KRS 304.17A-005(42).

Section 2. Health Risk Assessment. [~~Requirements of an ICARE Program Participating Insurer. (1) If an employer discontinues a health benefit plan offered by an ICARE Program participating insurer that is not a qualified health benefit plan and obtains coverage under a qualified health benefit plan offered by the same ICARE Program participating insurer, the insurer shall be limited to adjusting the risk factors in determining the new premium rate for the employer group to the requirements established under KRS 304.17A-0952(5)(b).~~

~~(2)~~] An ICARE Program participating insurer shall:

(1)[~~(a)~~] Within sixty (60) days of receiving notification of a newly-enrolled ICARE Program participating employer by the office, conduct a health risk assessment as established in 2006 Ky. Acts ch. 252, Part XXIII, sec. 3(4) for each eligible employee of the employer; and

(2)[~~(b)~~] Within sixty (60) days of conducting a health risk assessment as established in subsection (1) of this section [~~paragraph (a) of this subsection~~], and pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec 3(4), offer the following:

(a)[~~1.~~] A wellness program;

(b)[~~2.~~] Case management services; and

(c)[~~3.~~] Disease management services.

Section 3. Qualified Health Benefit Plans. (1) All health benefit plans approved by the office for use in the small group or employer-organized association market shall be deemed qualified health benefit plans. [~~An ICARE Program participating insurer shall notify the office in writing of any health benefit plans previously approved by the office that meet the requirements of 2006 Ky. Acts ch. 252, Part XXIII, secs. 3(2) and 3(4). The notification shall:~~

~~(a) Include the approved form number of each health benefit plan;~~

~~(b) Identify each health benefit plan as a:~~

~~1. Consumer-driven health benefit plan;~~

~~2. Basic health benefit plan; or~~

~~3. Enriched health benefit plan, and~~

~~(c) Include a request that an identified health benefit plan be designated as a qualified health benefit plan by the office.~~]

(2) If an ICARE Program participating insurer develops a new health benefit plan or amends a previously approved health benefit plan to meet the requirements of 2006 Ky. Acts ch. 252, Part XXIII, secs. 3(2) and 3(4), the insurer shall submit[~~:~~

~~(a) Submit~~] for approval by the office, a:

(a)[~~1.~~] Form filing for each new or amended health benefit plan in accordance with KRS 304.14-120(2), 304.14-430 - 304.14-450, and 806 KAR 14.007; and

(b)[~~2.~~] Rate filing for each new or amended health benefit plan in accordance with KRS 304.17A-095, 304.17A-0952, 304.17A-0954 and 806 KAR 17:150, as applicable[~~; and~~

~~(b) Include with a filing identified in paragraph (a) of this subsection, a cover letter clearly requesting that a new or amended health benefit plan be designated as a qualified health benefit plan.~~

~~(3) If the ICARE Program participating insurer has complied with subsections (1) and (2) of this section, the office shall:~~

~~(a) Designate a health benefit plan approved by the office as a qualified health benefit plan; and~~

~~(b) Notify the insurer of the office designation~~.]

Section 4. Requirements of Disclosure. Pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 8(1), a disclosure shall:

(1) Be distributed to an eligible employer by an insurer in written or electronic format;

(2) Include information relating to availability of the:

(a) Health Insurance Premium Payment (HIPP) Program by stating the following: "The Health Insurance Premium Payment (HIPP) Program is administered by the Department for Medicaid Services and pays for the cost of private health insurance premiums. The Program reimburses individuals or employers for private health insurance payments for individuals who are eligible for Medicaid when it is cost effective. For more information, or to see if you are eligible, contact the Department for Medicaid Services, HIPP Program, 275 East Main Street, Frankfort, Kentucky 40621.";

and

(b) ICARE Program, which shall include:

1. Information relating to an eligible employer and employee;

2. Amount of initial health care incentive payment and incremental reduction in rates pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 4(1);

3. [~~A list of qualified health benefit plans designated by the office and offered by the insurer;~~

4.] Limited enrollment of eligible employers under the ICARE Program; and

4 [~~5.~~] Office Web site and toll-free telephone number of the ICARE Program; and

(3) Be [~~Beginning on January 1, 2007, and annually thereafter, be~~] submitted annually to the office for review.

Section 5. ICARE Program Data Reporting Requirements. (1)(a) An [~~No later than January 1, 2007, an~~] ICARE Program participating insurer shall designate a contact person to respond to inquiries of the office relating to the ICARE Program and provide to the office the contact person's:

1. Name;

2. Telephone and fax numbers; and

3. Electronic mail address, and

(b) If the information requested in paragraph (a) of this subsection is changed, the insurer shall notify the office within fifteen (15) days of the date of the change.

(2) No later than the fifteen (15) day of each month [~~Beginning on January 15, 2007, and monthly thereafter~~], the office shall report electronically to the designated contact person of an ICARE Program participating insurer as established in subsection (1) of this section, the following information for each newly enrolled and terminated ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group; and

(c) The ICARE Program year effective date.

(3) Each [~~Beginning on January 1, 2007, and monthly thereafter, each~~] ICARE Program participating insurer shall collect the following information monthly for each ICARE Program participating employer:

(a) The ICARE Program identification number;

(b) Name of employer group;

(c) Name of the qualified health benefit plan covering eligible employees;

(d) Month of coverage;

(e) Average monthly premium of each eligible employee;

(f) Number of eligible employees covered under the qualified health benefit plan; and

(g) Termination date, if applicable.

(4) [~~Beginning on January 20, 2007, and~~] No later than the 20th day of each month [~~thereafter~~], an ICARE Program participating insurer shall report to the office information identified in subsection (3) of this section in a format as established in the form, ICARE Report-1.

(5) For the calendar year ending December 31, 2007, and annually thereafter, an ICARE Program participating insurer shall submit to the office, a report of the average annual premium of each ICARE Program participating employer. The annual report shall:

(a) Include for each ICARE Program participating employer:

1. ICARE Program identification number;

2. Name of the employer group; and

3. Average annual premium paid; and

(b) Be submitted in a format as established in the form, ICARE Report-1:

1. No later than February 1, for the previous calendar year; and

2. In an electronic or written format.

Section 6. Annual Office Review of ICARE Books and Records. The office may make or cause to be made an annual review

of the books and records of an ICARE Program participating insurer or agent to ensure compliance with:

(1) 2006 Ky. Acts ch. 252, Part XXIII, secs. 1 through 8, 806 KAR 17:540, 806 KAR 17:545 and this administrative regulation; and

(2) The representations made by the employer on its application for participation in the ICARE Program.

Section 7. Effective Date. The requirements, implementation, and enforcement of this emergency regulation shall begin on July 1, 2007

Section 8. Incorporation by Reference. (1) "ICARE Report-1", (12/2006), is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. Forms may also be obtained on the office Web site at http://doi.ppr.ky.gov/kentucky/.

JULIE MIX MCPEAK, Executive Director
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: June 20, 2007
FILED WITH LRC: June 29, 2007 at noon

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 23, 2007 at 9 a.m. (Eastern Time) at the Kentucky Office of Insurance, 215 West Main Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 16, 2007, five work days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Melea Rivera, Health Policy Specialist II, Kentucky Office of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602-0517, phone (502) 564-6088, fax (502) 564-2728.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Melea Rivera

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements of insurers participating in the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program, qualified health benefit plans, the disclosure relating to the Health Insurance Premium Payment (HIPP) Program as authorized under 42 U.S.C. sec 1396e and ICARE Program, data reporting, and annual review by the Office of Insurance. Additionally, this administrative regulation establishes the form to be used by insurers for monthly and annual reporting.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish requirements of ICARE Program participating insurers, a process for designation of qualified health benefit plans, the manner and content of required HIPP and ICARE Program disclosures, the form and content of monthly and annual reports, and the annual review by the Office. This administrative regulation is also necessary to clarify the provisions of 2006 Ky. Acts ch. 252, Part XXIII, secs. 1-8, to prevent differing interpretations among health insurers in the small group market.

(c) How this administrative regulation conforms to the content of the authorizing statutes. KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." 2006 Ky. Acts 252, Part XXIII, sec. 8 requires the Office in coordination with the Cabinet for Health and Family Services to establish the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S C. sec 1396e and ICARE Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation defines terms and establishes standards for the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S.C. sec 1396e and the ICARE Program, as required under 2006 Ky. Acts 252, Part XXIII, sec. 8. Additionally this administrative regulation establishes the requirements for qualified health benefit plans, data reporting, ICARE Program participating insurers and annual review pursuant to 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment removes insurer requirements relating to designating an existing product as a qualified health benefit plan, makes conforming or technical changes to the regulation, and establishes a future effective date for these changes.

(b) The necessity of the amendment to this administrative regulation: In order to limit exposure to the high cost of health care in this state, protect human health by offering more affordable health insurance coverage for employees of small group employers in Kentucky, and remove some of the barriers to ICARE Program eligibility, it is necessary to promulgate this emergency regulation and clarify requirements for enrollment in this program.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 304.2-110(1) authorizes the executive director to promulgate administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code, as defined by KRS 304.1-010. 2006 Ky. Acts ch. 252, Part XXIII, sec. 2(5) requires the Office to establish "guidelines for determination of preference for employer groups based upon federal poverty level, eligibility criteria, health care incentive payment procedures, program participating insurer and employer reporting requirements, and administrative guidelines for the ICARE Program." 2006 Ky. Acts 252, Part XXIII, sec. 8 requires the Office in coordination with the Cabinet for Health and Family Services to establish the manner and content of a disclosure of the availability of the HIPP Program as authorized under 42 U.S.C. sec 1396e and ICARE Program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment changes an administrative guideline of the ICARE Program by deeming all previously approved health benefit plans approved for marketing in the small group or employer-organized association markets as qualified health benefit plans and responding to recommendations received during the first few months of the ICARE Program's operation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will directly affect twelve (12) insurers offering health benefit plans in the small group and employer-organized association markets. The regulation will also affect approximately 4,000 small business employers with 20,000 employees that may be eligible for the ICARE Program.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The twelve (12) insurers that offer health insurance coverage in the small group and employer-organized

association markets will no longer be required to submit plans to be designated as qualified health benefit plans since all health benefit plans marketed to small groups and employer-organized associations will be deemed ICARE qualified plans. This may increase the number of employers who qualify for the ICARE Program because all health benefit plans offered in the small group and employer-organized association market will be deemed ICARE qualified plans.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not add additional costs relating to an insurer's routine operating expenses.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The insurers will be in compliance with 2006 Ky. Acts 252, Part XXIII, secs.1 through 8 and this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Preliminary estimates of administrative costs of the ICARE Program are projected to be $145,670 for fiscal year 2006-2007 for the Office of Insurance.

(b) On a continuing basis: Preliminary estimates of administrative costs of the ICARE Program are projected to be $161,550 for fiscal year 2007-2008 for the Office of Insurance. A total of $20,000,000 has been allocated from the General Fund for the ICARE Program.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The source of funding to be used for the implementation and enforcement of this administrative regulation will be the budget of the Office of Insurance. A total of $20,000,000 has been allocated from the General Fund for the ICARE Program.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This administrative regulation will not require an increase in Office of Insurance fees or funding.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not directly or indirectly increase any fees charged by the Office of Insurance.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all insurers offering a health benefit plan in the small group market.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Office of Insurance is promulgating this administrative regulation relating to the Insurance Coverage, Affordability and Relief to Small Employers (ICARE) Program. The Kentucky Office of Insurance is the only state or local government impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 2006 Ky. Acts ch. 252, Part XXIII, sec. 8 requires the Office to establish by administrative regulation the manner and content of a disclosure by insurers, offering health insurance coverage in the small group and employer-organized association markets, relating to availability of the Health Insurance Purchasing Program as authorized under 42 U.S.C. sec 1396e and the ICARE Program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate revenue for state or local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate revenue for state or local governments.

(c) How much will it cost to administer this program for the first year? The Office of Insurance has estimated the costs of administering this administrative regulation to be $145,670 for the fiscal year 2006-2007.

(d) How much will it cost to administer this program for subsequent years? The Office of Insurance has estimated the costs of administering this administrative regulation for subsequent fiscal year to be $161,550.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Not applicable.

Expenditures (+/-): Not applicable.

Other Explanation:

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET
Department of Public Protection
Kentucky Horse Racing Authority
(Amendment)

810 KAR 1:015. Claiming races.

RELATES TO: KRS 230.215(2), [~~230.225(1),~~] 230.260(3)

STATUTORY AUTHORITY: KRS 230.215(2), [~~230.225(1),~~] 230.260(3)[~~, (6)~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.215(2), and [~~230.225(1),~~] 230.260(3) authorize the Authority to [~~requires the commission~~] promulgate administrative regulations prescribing the conditions governing horse racing. This administrative regulation prescribes the conditions for the conduct of claiming races.

Section 1. (1) In a claiming race [~~races~~] a horse shall be subject to claim for its entered price by a licensed owner in good standing, or by the holder of a certificate of eligibility to claim. The procedure for obtaining a certificate of eligibility to claim shall be as follows:

(a) An applicant shall, five(5) [~~fifteen (15)~~] days prior to entering a claim, submit:

1. An application for an owner's [~~owners' original~~] license;

2. A financial statement;

3. Written consent permitting the Authority to conduct a criminal background check [~~A finger print card~~];

4. The name of a licensed trainer, or person eligible to be licensed as a trainer, who will assume care and responsibility for the horse claimed; and

5. The requisite fee for an owner's [~~owners~~] license.

(b) The certificate of eligibility shall be valid for the remainder of the calendar year.

(2)(a) A claim may be made by an authorized agent.

(b) An agent may claim only for the account of those for whom the agent [~~he~~] is licensed as agent.

(c) The name of the authorized agent[~~,~~] and the name of the owner for whom the claim is being made shall appear on the claim slip.

(3)(a) A person shall not claim his own horse or cause his own horse to be claimed, directly or indirectly, for his own account.

(b) A claimed horse shall not remain in the same stable or under the care or management of the owner or trainer from whom it is claimed.

(4)(a) A person shall not claim more than three (3) horses from a race.

(b) Multiple claims submitted by the same owner, authorized agent [~~and/~~]or trainer for a single horse shall not be permitted and shall be void.

(5)(a) A claimed horse shall not run for thirty (30) days after being claimed in a race in which the determining eligibility price is less than twenty-five (25) percent more than the price for which the horse was claimed.

(b) The day following the day the horse is claimed shall count as [be] the first day.[,]

(c) The claimed horse shall be entitled to enter whenever necessary to permit it to start on the 31st calendar day following the claim.

(d) This subsection shall not apply to starter handicaps in which the weight to be carried is assigned by the handicapper, or to [and] starter allowance races.

(6)(a) A horse claimed in a claiming race shall not be sold or transferred, wholly or in part, within thirty (30) days after the day it was claimed, except in another claiming race.

(b) A claimed horse shall not race at a horse race meeting in another racing jurisdiction outside Kentucky until the earlier of:

(a) Sixty (60) days from the date on which the horse was claimed; or

(b) Thirty (30) days from the end of the meet. With the permission of the stewards, a claimed horse may [Unless the stewards grant permission for a claimed horse to] enter and start at an overlapping or conflicting meeting in Kentucky, if the stewards determine that permitting the horse to do so will not be detrimental to the meeting from which the horse is [a horse shall not race elsewhere until the close of entries of the meeting at which it was] claimed.

(7)(a) A claim shall be:

1. Made on the form [Commission] "Claim Blank";

2. Sealed in an envelope supplied by the Authority [Commission]; and

3. Deposited in the association's claim box.

(b) The "Claim Blank" form and envelope shall be filled out completely and accurately.

(8)(a) Claims shall be deposited in the claim box at least fifteen (15) minutes before post time of the race from which the claim is being made.

(b) Money or its equivalent shall not be put in the claim box.

(c) A claim shall be valid if the claimant at the time of filing the claim has a credit balance in his account with the horseman's bookkeeper of not less than the amount of the claim, plus the Kentucky sales tax.

(9) The stewards, or their designated representative, shall:

(a) Open the claim envelopes for each race as soon as the horses leave the paddock en route to the post; and

(b) Check with the horseman's bookkeeper to ascertain whether the proper credit balance has been established with the association; and

(c) Verify that the claimant has a valid owner's license or certificate of eligibility to claim.

(10) If more than one (1) valid claim is filed for the same horse, title to the horse shall be determined by lot under the supervision of the stewards or their designated representative.

(11)(a) After the race has been run a horse that has been claimed shall be delivered to the claimant.

(b) The claimant shall present written authorization for the claim from the racing secretary.

(c) After written authorization has been presented, horses that are sent to the detention area for post race testing shall be delivered.

(d) Other horses shall be delivered in the paddock.

(e) A person shall not refuse to deliver a horse claimed out of a claiming race to the person legally entitled to the horse.

(f) If the owner of a horse that has been claimed refuses to deliver the horse to the claimant, the horse shall be disqualified from further racing until delivery is made.

(12)(a) A claim shall be irrevocable.

(b) Title to a claimed horse shall be vested in the successful claimant from the time the horse is a starter,[;] and the funds transferred to the account of the previous owner. The transferred funds shall be[, with said funds] immediately available for future claiming transactions.

(c) The successful claimant shall become the owner of the horse whether the horse [it] is:

1. Alive or dead;

2. Sound or unsound, or

3. Injured during the race, or after it.

(d) A claimed horse shall run in the interest of and for the account of the owner from whom it is claimed.

(13)(a) A person shall not offer to:

1. Enter, or enter into an agreement to claim, or not to claim; or

2. Prevent [Attempt], or attempt to prevent, another person from claiming any horse in a claiming race.

(b) A person shall not attempt by intimidation to prevent anyone from running a horse in a claiming race.

(c) An owner or trainer shall not make an agreement with another owner or trainer for the protection of each other's horse in a claiming race.

(14)(a) A claim that does not comply with the provisions of this administrative regulation shall be void.

(b) The stewards shall be the judges of the validity of a claim.

(15) A person holding a lien of any kind against a horse entered in a claiming race shall record the lien with the racing secretary or horseman's bookkeeper at least one (1) hour [thirty (30) minutes] before post time for that race. If no lien is [none is so] recorded, it shall be presumed that no lien [none] exists.

(16) The engagements of a claimed horse pass automatically with the horse to the claimant.

(17) Notwithstanding any designation of sex or age appearing on the racing program or in any racing publication, the claimant of a horse shall be solely responsible for determining the age or sex of the horse claimed.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Claim Blank[(Rev 96)]"; and

(b) Claim Blank envelope.

(2) This material may be inspected at Kentucky Racing Commission, 4063 Iron Works Pike, Building B, Lexington Kentucky 40511, Monday through Friday, 8 a.m. to 4.30 p.m.

WILLIAM STREET, Chairman
TIM LEDONNE, Commissioner
LLOYD R. CRESS, Deputy Secretary
For TERESA J. HILL, Secretary
APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 28th, 2007, at 11 a.m., at the South Park Theatre at the Visitor's Information Center, Kentucky Horse Park, 4063 Iron Works Parkway, Lexington, Kentucky 40511. Individuals interested in being heard at this hearing shall notify the Kentucky Horse Racing Authority in writing by August 21st, 2007, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31st, 2007. Please send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: John L. Forgy, Kentucky Horse Racing Authority, 4063 Iron Works Parkway, Building B, Lexington, Kentucky 40511, phone (859) 246-2040, fax (859) 246-2039.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: John L. Forgy

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation amends 810 KAR 1:015, which governs claiming races. The amendment makes several substantive changes to the regulation outlined below, and also amends the language of the

regulation to conform to KRS Chapter 13B drafting requirements.

(b) The necessity of this administrative regulation: The amendments are necessary to update to industry standards the thoroughbred claiming regulation and to strengthen the horse racing industry in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation governs thoroughbred claiming races pursuant to KRS 230.215(2) and 230.260(3), which authorize the Authority to promulgate administrative regulations governing the conditions of horse racing.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the conditions of claiming races, one of several types of races run at Kentucky race tracks. A claiming race is a race in which the horses running in the race can be purchased ("claimed") from the original owner by a buyer willing to pay a predetermined price set forth in the written conditions of the race.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment alters the language of the regulation to conform to KRS Chapter 13B drafting requirements. More importantly, the amendment makes the following substantive changes to the regulation:

1. Currently, if an owner who desires to participate in a claiming race does not have a Kentucky license, that person may nevertheless participate in the claiming race by obtaining a certificate of eligibility to claim. To apply for a certificate, the person must submit an application for a license, the fee for the license, a financial statement, and the name of the trainer. In the past, the regulation required submission of a fingerprint card, but this requirement is being eliminated; instead the applicant need only provide written consent permitting the Authority to conduct a criminal background check. Also, whereas in the past all of the above documentation had to be provided 15 days in advance of the entry of the claim (usually the day of the race), the regulation is being amended to require it only 5 days in advance. This is less burdensome to the applicant, and modern technology allows the Authority and the race tracks to process this information more quickly.

2. The most significant change is the extension of the "jail time" provision.

Presently, this regulation prohibits a claimed horse from racing at another track until the close of entries of the meeting at which it was claimed. Entries typically close in the last few days of the meet. (As an exception to the prohibition against racing at another track, the regulation allows the stewards to grant permission for the horse to enter and start at an overlapping or conflicting meeting within Kentucky, but this exception is rarely granted).

The problem facing the horse racing industry is that claimants from out of state frequently appear during the last few days of a Kentucky meet, claim numerous horses, and then take them out of state to run at other tracks. Kentucky suffers from the loss of these horses, which are no longer available to fill races and increase handle and purses.

Many states which have experienced similar problems have enacted more restrictive "jail time" rules, which prohibit a horse claimed at an in-state meet from racing out of state for 30 or 60 days from the end of the meet. This serves as an incentive for the claimant to continue to race the horse at in-state tracks, at least for the required period of time. In-state tracks therefore benefit from the participation of the horses and enhanced field sizes, and the gambling public have more horses upon which to wager. More money is also wagered upon the races as a whole, which can result in larger purses.

The Authority therefore desires to amend the regulation to read as follows: "A claimed horse shall not race at a horse race meeting in another jurisdiction until the earlier of (a) sixty (60) days from the date on which the horse was claimed, or (b) thirty (30) days from the end of the meet. With the permission of the stewards, a claimed horse may enter and start at an overlapping or conflicting meeting in Kentucky."

This rule will effectively impose a 30-day restriction on racing horses in another state after the end of the meet, encouraging the horses to race in Kentucky for that period of time. This restriction is eased somewhat in the case of horses that are claimed early in a long meeting lasting several months - for example, from January 1st through April 5th, the length of the 2007 Winter/Spring meet at Turfway. In these cases, the rule will allow horses claimed early in the meet to race elsewhere after 60 days, if the 60 days elapse before the 30-day period after the end of the meet. The Authority believes that this amendment will sufficiently protect Kentucky claiming horses without placing an undue burden upon owners and trainers, who will be prohibited from racing their horses outside of Kentucky during the time periods set forth in the regulation.

3. The regulation is being amended to specifically require the stewards to determine whether the claimant has a valid owner's license. The stewards usually do this as a matter of routine, but the regulation now makes it explicit.

4. The regulation is being amended to require a person holding a lien against a horse to record the lien in the racing secretary's office at least one hour before the race, rather than 30 minutes before as the regulation currently states. This will give the racing secretary more time to investigate the validity of the lien and the ownership issues involved. Since horses can change ownership as a result of a claim, it is very important to ensure that the person who enters a horse into a race has free and clear title to the horse, unclouded by liens.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to allow the regulation to reflect current realities and to strengthen the horse racing industry in Kentucky.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment alters some of the details of the rules of claiming races. KRS 230.215(2) and KRS 230.260(3) grant the Authority to the power to promulgate administrative regulations governing the conditions of horse racing, including claiming races.

(d) How the amendment will assist in the effective administration of the statutes: The amendment will clarify the language of this administrative regulation, and will alter the rules of claiming races in some particulars, as described in 2(a) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Among the individuals affected by this administrative regulation are the owners and trainers of horses that run in claiming races. As of July 10, 2007, there are 3,468 owners, 706 owner/trainers, and 164 trainers in Kentucky. Kentucky race tracks, the horse industry and the gambling public as a whole will benefit due to the increased number of horses running in Kentucky, and the increased amount of money wagered and purses offered, as a result of the time restrictions on claimed horses racing in other states.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities will be required to comply with the rule changes outlined in (2)(a) above, but no new specific compliance activities are required. Horse owners and trainers will be restricted from racing claimed horses outside the state of Kentucky for certain time periods, but the horse industry as a whole will gain from the restriction due to increased field sizes, increased handle, and increased purses.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No compliance costs will be imposed upon the regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The horse racing industry and the race tracks will benefit from increased field sizes, increased handle, and increased purses, as described in 2(a) above, due to more claimed horses running in Kentucky.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost. The administrative regulation merely changes some of the rules of claiming races.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. No additional fees or funding will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No new fees are required by this administrative regulation.

(9) TIERING: Is tiering applied? (Explain why or why not).

Tiering is not applied to this administrative regulation because the regulation simply governs the rules of claiming races. All participants in these races compete on an equal basis.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Horse Racing Authority will be impacted by this administrative regulation, in that it administers the rules of horse racing.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. No federal statutes or regulations are involved.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. N/A

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need
(Amendment)

900 KAR 5:020. State Health Plan for facilities and services.

RELATES TO: KRS 216B 010-216B.130

STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(27), 216B 040(2)(a)2a

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires the cabinet to promulgate an administrative regulation, updated annually, to establish the State Health Plan. The State Health Plan is a critical element of the certificate of need process for which the cabinet is given responsibility in KRS Chapter 216B. This administrative regulation establishes the State Health Plan for facilities and services.

Section 1. The 2007-2009 State Health Plan as amended July 13, 2007 ~~[2006 Update to the 2004-2006 State Health Plan as amended January 31, 2006]~~ shall be used to (1) Review a certificate of need application pursuant to KRS 216B.040; and (2) Determine whether a substantial change to a health service has occurred pursuant to KRS 216B.015(28)(a) and 216B.061(1)(d).

Section 2. Incorporation by Reference. (1) The 2007-2009 State Health Plan as amended July 13, 2007 ~~[2006 Update to the 2004-2006 State Health Plan as amended May 12, 2006]~~ is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Certificate of Need, 275 East Main Street, third floor, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 10, 2007

FILED WITH LRC: July 11, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shane P. O'Donley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040

(b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2007-2009 State Health Plan by reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS 216B.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation of the State Health Plan is required by KRS 216B.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment will update the 2007-2009 State Health Plan for 2007.

(b) The necessity of the amendment to this administrative regulation: KRS 216B 015(27) requires that the State Health Plan be prepared triennially. The last triennial State Health Plan was prepared in 2005, so the next triennial plan is being prepared for 2007-2009.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) that the State Health Plan be updated on an annual basis.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administra-

tive regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The modifications will only apply to potential Certificate of Need applicants for Special Care Neonatal Beds, Psychiatric Hospital Beds, Home Health Services, Hospice Services, and Megavoltage Radiation Therapy programs.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): None.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding will be necessary.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned or controlled healthcare facilities or services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared triennially and updated annually. This administrative regulation incorporates the 2007-2009 State Health Plan by reference.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): None

Other Explanation: N/A

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy
Division of Certificate of Need
(Amendment)

900 KAR 6:030. Certificate of need expenditure minimums.

RELATES TO: KRS 216B.010-216B.130, 216B.455, 216B 990(2)

STATUTORY AUTHORITY: KRS 194A.050(1), 216B.040(3)(a), 216B.130

NECESSITY, FUNCTION, AND CONFORMITY. KRS 216B.040(3)(a) authorizes the Cabinet for Health and Family Services to promulgate administrative regulations. KRS 216B.130 requires the cabinet to promulgate an administrative regulation to annually adjust expenditure minimums provided in KRS Chapter 216B. This administrative regulation provides for the adjustment of expenditure minimums for capital expenditures and major medical equipment.

Section 1. (1) The U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type shall be used in making annual adjustments to the expenditure minimums required by KRS 216B.130.

(2) The change in the price index for the twelve (12) month period ending December 31, 2006, represents a 6.64 percent increase [~~2005, represents 6.74 percent increase~~].

Section 2. (1) The capital expenditure minimum established in KRS 216B.015(7) shall be $2,538,163 [~~$2,380,123~~].

(2) The major medical equipment minimum established in KRS 216B.015(16) shall be $2,538,163 [~~$2,380,123~~].

CHRIS CORBIN, Executive Director
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 10, 2007

FILED WITH LRC: July 11, 2007 at 11 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shane P. O'Donley

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administra-

tive regulation provides for the annual adjustment of expenditure minimums for capital expenditures and major medical equipment as required by KRS 216B.130.

(b) The necessity of this administrative regulation: The annual adjustment of expenditure minimums for capital expenditures and major medical equipment is mandated by KRS 216B.130.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms with KRS 216B:130 which requires the Cabinet for Health and Family Services to annually adjust certificate of need expenditure minimums.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes This administrative regulation will assist in the effective administration of the certificate of need statutes by complying with KRS 216B.130, which requires the Cabinet for Health and Family Services to annually adjust certificate of need expenditure minimums.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: It will adjust the certificate of need capital expenditure minimum based on the U.S. Department of Commerce, Bureau of Economic Analysis Price Indexes for Private Fixed Investment by Type.

(b) The necessity of the amendment to this administrative regulation: It is necessary to amend the existing administrative regulation because KRS 216B.130 requires the Cabinet for Health Services to annually adjust expenditure minimums.

(c) How the amendment conforms to the content of the authorizing statutes: Same as above.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the certificate of need statutes (KRS Chapter 216B) by adjusting the expenditure minimums as required by statute for the twelve (12) month period beginning on the effective date of the regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all individuals, businesses, organizations, and state and local governments seeking to apply for certificates of need. It is not yet known how many persons will actually apply for certificates of need.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with this regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The groups identified in question (3) will be impacted favorably by this administrative regulation which will increase certificate of need expenditure minimums, allowing providers and potential providers to fund more expensive projects without first obtaining a certificate of need.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No cost

(b) On a continuing basis: No cost

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Certificate of Need administrative regulation relates to licensed health services provided by local government, including but not limited to home health agencies and ambulance services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation will assist in the effective administration of the certificate of need statutes by complying with KRS 216B.130, which requires the Cabinet for Health and Family Services to annually adjust certificate of need expenditure minimums

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation will increase certificate of need expenditure minimums, allowing providers to increase the expenditures that they may make without a certificate of need.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated to state or local government.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Inspector General
Division of Health Care Facilities and Services
(Amendment)

902 KAR 20:009. Facility specifications; hospitals.

RELATES TO: KRS 216B.010-216B.130, 216B.990(1), (2)
STATUTORY AUTHORITY: KRS 216B.042, 216B.105
NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 requires [~~and 216B.105 mandate~~] that the Kentucky Cabinet for Health and Family Services [~~Human Resources~~] regulate health facilities and health services. This administrative regulation provides licensure requirements for plan submission and the structural specifications and plant requirements for new construction, renovation, [~~and alteration~~] and maintenance of hospital facilities. [~~Hospital facilities licensed prior to the effective date of this administrative regulation shall meet the structural specifications in~~

~~force on the date of their most recent licensure inspection.~~]

Section 1. Definitions. (1) [~~"Board" means the Commission for Health Economics Control in Kentucky.~~

~~(2)~~] "License" means an authorization issued by the Cabinet for Health and Family Services [~~board~~] for the purpose of operating a hospital facility.

~~(2)~~][~~(3)~~] "Licensure agency" means the [~~Division for Licensing and Regulation in the office~~] of [the] Inspector General, Cabinet for Health and Family Services [~~Human Resources~~].

(3) "Relocatable unit" means a structure that is not on wheels and which is built in such a manner that it may be relocated at any time.

(4) "Transportable unit" means any pre-manufactured structure, trailer, or self-propelled unit, equipped with a chassis or on wheels.

Section 2. Preparation and Approval of Plans and Specifications. After receiving a certificate of need, if required, and before beginning new construction or renovation, or making a change in function of a facility [~~from the board~~], the following procedures shall be followed:

(1) The licensee or applicant shall complete the planning and design requirements established in Chapter 1.5, Paragraphs 1.1-2.3.3.2, of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition, published by the American Institute of Architects. [~~Before construction is begun for the erection of new buildings or alterations to existing buildings or any change in facilities for a hospital, the licensee or applicant shall submit plans to the licensure agency for approval.~~]

(2) The licensee or applicant shall submit a functional program for each project to the licensure agency. The functional program shall meet the requirements established in Chapter 1.2, Paragraphs 1.2-2.3.2, of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(3) [All] architectural, mechanical and electrical drawings shall bear the seal of an architect registered in the Commonwealth of Kentucky [~~or the seal of a professional engineer registered in the Commonwealth of Kentucky, or both~~].

~~(4)~~][~~(3)~~] Drawings shall not exceed thirty-six (36) inches by forty-six (46) inches when trimmed.

~~(5)~~][~~(4) All such~~] plans and specifications must be submitted to and approved by the licensure agency prior to commencement of new construction, renovation, or change in function of a facility [~~of new buildings or alterations of existing buildings~~].

~~(6)~~][~~(5)~~] Plans and specifications [~~in specific detail as required by the Kentucky Building Code shall be submitted, together with architectural and/or engineering stamps as required by KRS Chapters 322 and 323, to the Department of Housing, Buildings and Construction for determining compliance with the Kentucky Building Code. All such plans and specifications~~] must be approved by the Office [~~Department~~] of Housing, Buildings and Construction. Appropriate local building permits shall be obtained prior to commencement of new construction or renovation..

(7) Radiation protection requirements of facilities where sources of radiation are used or stored shall be approved by the Radiation Health Branch, Division of Public Health Protection and Safety, Department for Public Health, Cabinet for Health and Family Services.

Section 3. Submission of Plans and Specifications for Hospitals. (1) First stage, schematic plans.

(a) Single line drawings of each floor shall show the relationship of the various departments or services to each other and the room arrangement in each department. The name of each room shall be noted. Drawings shall include typical patient room layouts scaled (one-half (1/2) inch = one (1) foot) with dimensions noted. The proposed roads and walks, service and entrance courts, parking and orientation shall be shown in a plot plan.

(b) If the project is an addition, or is otherwise related to existing buildings on the site, plans shall show the facilities and general arrangement [~~arrangements~~] of those buildings.

(2) Second stage, design development [~~preliminary~~] plans. Design development [~~Preliminary sketch~~] plans shall include the following:

(a) Architectural.

1. Plans of basement, floors and roof showing space assignment, sizes, and outline of fixed and movable equipment;

2. Elevations [~~All elevators~~] and typical sections;

3. Plot plan showing roads, parking, and sidewalks; and

4. Areas and bed capacities by floors.

(b) Mechanical.

1. Single line layout of [all] duct and piping systems;

2. Riser diagrams for multistory construction; and

3. Scale layout of boilers and major associated equipment and central heating, cooling, and ventilating units.

(c) Electrical.

1. Plans showing space assignment, size, and outline of [~~assignments, sizes and outlines of fixed equipment such as~~] transformers, main switch, [~~and~~] switchboards, [~~and~~] generator sets and other fixed equipment; and

2. Simple riser diagram for multistory building construction, showing arrangement of feeders, subfeeders, bus work, load centers, and branch circuit panels.

(d) Outline specifications.

1. General description of the construction, including interior finishes, types and locations of acoustical material, and special floor covering;

2. Description of the air-conditioning, heating, and ventilation systems and their controls; duct and piping systems; and dietary, laundry, sterilizing and other special equipment; and

3. General description of electrical service including voltage, number of feeders, and whether feeders are overhead or underground.

(3) Third stage, contract documents.

(a) Working drawings. Working drawings shall be complete and adequate for bid, contract, and construction purposes. Drawings shall be prepared for each of the following disciplines [~~branches~~] of the work: architectural, structural, mechanical, and electrical. Drawings [~~They~~] shall include the following:

1. Architectural drawings.

a. Approach plan showing [all] new topography, newly established levels and grades, existing structures on the site [~~if any~~)], new building structures, roadways, walks, and parking areas;

b. Plan of each basement, floor, and roof;

c. Elevations of each facade;

d. Sections through building;

e. Required scale and full-size details;

f. Schedule of doors, windows, and room finishes;

g. Layout of typical and special rooms indicating [all] fixed equipment and major items of movable equipment. Equipment not included in the construction contract shall be so indicated; and

h. Conveying systems. Details of construction, machine and control spaces necessary, size and type of equipment, and utility requirements for the following:

(i) Dumbwaiters: electric, hand, or hydraulic;

(ii) Elevators: freight, passenger, or patient;

(iii) Loading dock devices; and

(iv) Pneumatic tube systems.

2. Structural drawings.

a. Plans for foundations, floors, roofs, and [all] intermediate levels with sizes, sections, and the relative location of the various structural members;

b. Dimensions of special openings; and

c. Details of [all] special connections, assemblies, and expansion joints.

3. Mechanical drawings.

a. Heating, steam piping, and air-conditioning systems[-]

(i) Radiators and steam heated equipment such as sterilizers, warmers, and steam tables;

(ii) Heating and steam mains and branches with pipe sizes;

(iii) Diagram of heating and steam risers with pipe sizes;

(iv) Sizes, types, and capacities of boilers, furnaces, hot water heaters with stokers, oil burners, or gas burners;

(v) Pumps, tanks, boiler breeching, and piping and boiler room accessories;

(vi) Air-conditioning systems with required equipment, water and refrigerant piping, and ducts;

(vii) Supply and exhaust ventilation systems with heating/cooling connections and piping; and

(viii) Air quantities for [all] room supply and exhaust ventilating duct openings.

b. Plumbing, drainage, and standpipe systems; [-]

(i) Size and elevation of[:] street sewer, house sewer, house drains, street water main, and water service into the building;

(ii) Location and size of soil, waste, and water service with connections to house drains, clean-outs, fixtures, and equipment;

(iii) Size and location of hot, cold and circulating branches, and risers from the service entrance, and tanks;

(iv) Riser diagram for [all] plumbing stacks with vents, water risers, and fixture connections;

(v) Gas, oxygen, and vacuum systems;

(vi) Standpipe and sprinkler systems where required; and

(vii) [all] Fixtures and equipment that require water and drain connections.

4. Electrical drawings.

a. Electric service entrance with switches and feeders to the public service feeders, characteristics of the light and power current, transformers and their connections if located in the building;

b. Location of main switchboard, power panels, light panels, and equipment. Diagram of feeders and conduits with schedule of feeder breakers or switches;

c. Light outlets, receptacles, switches, power outlets and circuits;

d. Telephone layout showing service entrance, telephone switchboard, strip boxes, telephone outlets and branch conduits;

e. Nurses' call systems with outlets for beds, duty stations, door signal light, annunciators, and wiring diagrams;

f. Emergency electrical system with outlets, transfer switch, sources of supply, feeders, and circuits; and

g. All other electrically operated systems and equipment.

(b) Specifications. Specifications shall supplement the drawings to fully describe type, size capacity [types, sizes, capacities,] workmanship, finish [finishes] and other characteristics of [all] materials and equipment. Specifications [and] shall include:

1. Cover or title sheet;

2. Index; and

3. Detailed description of [Sections describing] materials and workmanship [in detail] for each class of work.

(c) Access to work. Representatives of the appropriate state agencies shall have access at [all] reasonable times to the work [wherever it is in preparation or progress,] and the contractor shall provide proper facilities for such access and inspection.

Section 4. Compliance with Building Codes, Ordinances and Administrative Regulations. (1) This section may be administered independently from other sections of this administrative regulation.

(2) General. Nothing stated herein shall relieve the license or applicant [sponsor] from compliance with building codes, ordinances, and administrative regulations which are enforced by city, county, or state jurisdictions

(3) The following requirements shall apply if [where] applicable and as adopted by the respective agency authority:

(a) [Requirements for] Safety pursuant to 815 KAR 10 060[020, as amended];

(b) [Requirements for] Plumbing pursuant to 815 KAR 20:010-191[, as amended];

(c) [Requirements for] Air contaminants for incinerators pursuant to 401 KAR 59:020 and 401 KAR 61.010;

(d) [Requirements for] Elevators pursuant to 815 KAR 4:010; and

(e) [Requirements for] Making buildings and facilities accessible to and usable by the physically handicapped pursuant to KRS 198B.260 and administrative regulations promulgated thereunder.

[(4) Prior to occupancy the facility shall have final approval from appropriate agencies.

(5) All facilities shall be currently approved by the Fire Marshal's Office in accordance with the Life Safety Code before relicensure is granted by the licensing agency.]

Section 5. Existing Facility Requirements. Licensure requirements for the structural specifications, plant requirements, and maintenance of a licensed hospital's physical structure which existed before the effective date of this regulation and hospital construction and renovation plans approved by the licensure agency before the effective date of this regulation shall meet the requirements in Sections 6 through 33 of this administrative regulation. [Facility Requirements and Special Conditions. (1) A copy of the narrative program as submitted in the Certificate of Need application for each project shall be provided by the sponsor and shall describe the functional space requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the objectives of the facility.

(2) The extent (number and types of rooms) of the diagnostic, clinical, and administrative facilities to be provided shall be determined by the services contemplated and the estimated patient load as described in the narrative program.

(3) Facilities shall be available to the public, staff, and patients who may be physically handicapped with special attention given to ramps, drinking fountain height, mirrors, etc.]

Section 6. Nursing Unit. (1) Patient rooms. Each patient room shall meet the following requirements:

(a) Maximum room capacity shall be four (4) patients.

(b) Minimum room area [areas] exclusive of toilet rooms, closets, lockers, wardrobes, or vestibules shall be 100 square feet in a one (1) bed room [rooms] and eighty (80) square feet per bed in a multibed room [rooms]

(c) A multibed room [Multibed rooms] shall be designed to permit no more than two (2) beds side by side parallel to the window wall with not less than a four (4) foot space provided between beds, and at least a three (3) foot space between the side of a bed and the nearest wall, fixed cabinet, or heating/cooling element. A minimum of four (4) feet is required between the foot of a bed and the opposite wall, or foot of the opposite bed in a multibed room [multibed rooms].

(d) Window. A patient room shall [All patient rooms must] have windows operable without the use of tools and shall have sills not more than three (3) feet above the floor. The window [Window] area shall be at least eight (8) percent of the patient room floor area.

(e) Nurses' calling system. See Section 32(7) of this administrative regulation.

(f) Lavatory. In a single or a [and] two (2) bed room [rooms] with private toilet room, the lavatory may be located in the toilet room. If [Where] two (2) patient rooms share a common toilet, a lavatory shall be provided in each patient room.

(g) Wardrobe or closet for each patient. Minimum clear dimensions shall be eight (8) inches deep by one (1) foot and eight (8) inches wide with full length hanging space, clothes rod and shelf.

(h) Cubicle curtains[,] or equivalent built-in devices shall be provided to furnish complete privacy for each patient [at any one time] in multibed rooms.

(i) No patient room shall be located more than 120 feet from the nurses' station, the clean workroom, and the soiled workroom. No room shall be used as a patient room if [where] the access is through another patient's room. At least sixty (60) percent of the beds in a nursing unit shall be located in rooms designed for one (1) or two (2) beds.

(2) Service areas in each nursing unit. The size of each service area shall [will] depend on the number and types of beds within the unit and shall include:

(a) Nurses' station for charting, doctors' charting, communications, and storage for supplies and nurses' personal effects.

(b) Clean workroom or clean holding area. The clean workroom shall contain a work counter, hand-washing lavatory or sink and storage facilities. The clean holding room shall be part of a system for storage and distribution of clean and sterile supplies and shall be similar to the clean workroom except that the work counter and hand-washing facilities may be omitted.

(c) Soiled workroom or soiled holding room.

1. A [The] soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, sink equipped for hand washing, work counter, waste receptacle, and linen receptacle.

2. A soiled holding room shall be part of a system for collection and disposal of soiled materials and shall be similar to the soiled

workroom except that the clinical sink and work counter may be omitted.

(d) Lounge and toilet rooms [~~room(s)~~] for staff including lockers for storage of personal effects. [~~readily accessible.~~ (] These rooms may [~~May~~] serve more than one (1) nursing unit.[)]

(e) Multipurpose room for conferences, demonstrations and consultation. This room may [(~~May~~] serve more than one (1) nursing unit.[)]

(f) Examination [~~Room for examination~~] and treatment room. The examination and treatment room [~~of patients. It~~] shall have a minimum floor area of 120 square feet with a minimum dimension of ten (10) feet. This room may [(~~May~~] serve more than one (1) nursing unit.[)] The examination and treatment room [~~Room~~] may be eliminated if all patient rooms are single-bed rooms. The room shall contain a lavatory or sink equipped for hand washing, work counter, storage facilities, and examination table. The emergency treatment room may be used for this purpose, if it is conveniently located on the same floor as the patient rooms.

(g) Medicine area. Provision shall be made for convenient and prompt twenty-four (24) hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.

1. If used, a medicine preparation room or unit shall be under the nursing staff's visual control and shall contain a work counter, refrigerator, and locked storage for biologicals and drugs.

2. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff.

3. A controlled [~~Controlled~~] substances locker must be under double lock.

4. A hand-washing facility shall be provided in the medicine area.

(h) Clean linen storage. An enclosed [~~Enclosed~~] storage space or a [(~~may be~~] designated area within the clean workroom shall be provided for storage of clean linen. [)-] If a closed cart system is used, storage may be in an alcove.

(i) Nourishment station The nourishment state [~~This~~] shall contain a sink equipped for hand washing, equipment[~~. Equipment~~] for serving between scheduled meals, refrigerator, storage cabinets, and a self-dispensing ice maker. A nourishment station may[~~dispenser units to provide patient service and treatment. (May~~] serve more than one (1) nursing unit on the same floor.[)]

(j) Patients' bathing facilities. Bathing facilities shall include at [At] least one (1) shower stall or one (1) bathtub for each twelve (12) patients not individually served. At least one (1) bathing facility on each patient floor shall have space for a wheelchair patient and [~~with~~] an assisting attendant. At least one (1) sitz bath shall be provided in post partum units.

(k) Stretcher and wheelchair parking area or alcove. The stretcher and wheelchair parking area or alcove may [(~~May~~] serve more than one (1) nursing unit on the same floor [)]

(l) Janitor's closet. A janitor's closet shall be provided for storage of housekeeping supplies and equipment. The closet shall have [~~with~~] a floor receptor or service sink. The closet may [(~~May~~] serve more than one (1) nursing unit on the same floor [)]

(m) Equipment storage room. The equipment storage room shall have [~~with~~] sufficient space for equipment. The equipment storage room may [~~such as I.V. stands, inhalators, air mattresses, and walkers. (May~~] serve more than one (1) nursing unit on the same floor.[)]

(n) Emergency equipment storage. Space for emergency equipment [~~such as crash carts~~] shall be located in close proximity to the nurses' station and out of traffic. The emergency equipment storage space may [~~provided and be under direct control of the nursing staff in close proximity to the nurses' station and out of traffic. (May~~] serve more than one (1) nursing unit on the same floor.[)]

(3) Patient toilet rooms A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms, but not more than four (4) beds. [(]The lavatory may be omitted from the toilet room if a lavatory [~~one (1)~~] is provided in each patient room [)]

(4) Isolation room. An isolation room shall be provided which shall have: [~~Isolation room(s) for the particular use of those prone to infections as well as those suffering from infections shall be provided. Each isolation room shall have:~~]

(a) One [~~Only one~~] (1) patient per room;

(b) Separate toilet room, with direct entry from the patient bed area, with bath or shower and lavatory [~~for the exclusive use of the patient allowing for direct entry from the patient bed area~~]; and

(c) Facilities outside and immediately adjacent to the patient room for maintaining aseptic conditions.

Section 7. Intensive Care Unit. Hospitals which have intensive care units shall meet the following requirements:

(1) Patient rooms. A Cardiac Intensive care patient [~~patients~~] shall be placed in a single-bed room [~~rooms~~]. A medical or [~~Medical and~~] surgical intensive care patient [~~patients~~] may be housed in a single-bed room or in a multibed room. [~~rooms. In the latter case,~~] At least one (1) single-bed room shall be provided in each medical or surgical care unit. [~~All~~] Beds shall be arranged to permit direct visual observation by nursing staff. Each patient room shall meet the following requirements:

(a) Clearance between beds in a multibed room [~~rooms~~] shall not be less than seven (7) feet with a minimum of three (3) feet to the side of beds and at least four (4) feet from the foot of the beds. A single-bed room or cubicle [~~rooms or cubicles~~] shall have a minimum clear area of 120 square feet with a minimum dimension of ten (10) feet.

(b) View panels shall be provided in the doors and walls for nursing staff observation of patients. A means shall be provided to obstruct the view panels when the patient requires visual privacy. Glazing for view panels shall be safety glass, wire glass or clear plastic unless [~~to reduce the hazard from accidental breakage, except where~~] wire glass is required for fire safety purposes.

(c) An I.V. solution support shall be provided for each patient and shall be positioned to prevent the suspension of [~~so that~~] the solution [~~is not suspended~~] directly over the patient.

(d) A lavatory equipped for hand washing shall be provided in each private patient room. In multibed rooms there shall be at least one (1) lavatory for each six (6) beds.

(e) Nurses' calling system. See Section 32(7) of this administrative regulation.

(f) Each cardiac intensive care patient shall be provided a toilet facility which is directly accessible from the bed area.

1. A [~~The~~] water closet shall have sufficient clearance around it to facilitate its use by a patient [~~patients~~] needing assistance.

2. A portable water closet is [~~closets are~~] permitted within the patient room. If a portable unit is [~~units are~~] used, facilities for servicing and storing the unit [~~them~~] shall be conveniently located to the cardiac care unit.

(g) Each room shall have a window or each bed shall have visual access to a window. [~~In the latter case, by use of vision panels in partitions,~~] one (1) window may serve more than one (1) patient by use of vision panels in partitions The window sill height shall not exceed three (3) feet above the floor.

(2) Service areas. The size and location of each service area shall [~~will~~] depend upon the number of beds to be served. One (1) service area may serve two (2) or more intensive care units The following service areas shall be located in or be readily available to each intensive care unit:

(a) Nurses' station. The nurses' station [~~It~~] shall be located to permit direct visual observation of each patient served.

(b) Hand-washing facilities. Hand-washing facilities [~~These~~] shall be located convenient to the nurses' station and medicine area.

(c) Charting facilities. Charting facilities [~~These~~] shall be separated from the monitoring service.

(d) Staff's toilet room. The toilet [~~This~~] room shall contain a water closet and lavatory equipped for hand washing.

(e) Closets. Individual closets or compartments for the safekeeping of coats and personal effects belonging to the nursing staff[~~. They~~] shall be located at or near the nurses' station.

(f) Clean workroom or a system for storage and distribution of clean and sterile supplies. The clean workroom shall contain a work counter, hand-washing facility, and storage facilities.

(g) Soiled workroom or soiled holding room.

1. A [The] soiled workroom shall contain a clinical sink or equivalent flushing rim fixture, sink equipped for hand washing, work counter, waste receptacle and soiled linen receptacles.

2. A soiled holding room shall be part of a system for collection and disposal of soiled materials and shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(h) Facilities for washing or flushing bedpans. Facilities for washing or flushing bedpans [These] shall be provided within the unit.

(i) Medicine area. Provision shall be made for convenient and prompt twenty-four (24) hour distribution of medicine to patients. This may be from a medicine preparation room or unit, a self-contained medicine dispensing unit, or by another approved system.

1. A [If used, a] medicine preparation room or unit shall be under the nursing staff's visual control and shall[,] contain a work counter, refrigerator, and locked storage for biologicals and drugs. A medicine preparation room [It] shall contain a minimum floor area of fifty (50) square feet.

2. A medicine dispensing unit may be located at the nurses' station, in the clean workroom, or in an alcove or other space under direct control of the nursing or pharmacy staff.

3. Controlled substances shall [must] be under double lock and a hand-washing facility shall be provided.

(j) Clean linen storage. A separate closet or designated area within the clean workroom shall be provided for clean linen storage. If a closed cart system is used, storage may be in an alcove.

(k) Nourishment station. The nourishment station [This] shall contain a sink equipped for hand washing, equipment for serving between scheduled meals, refrigerator, storage cabinets and a self-dispensing ice maker[-dispenser units] to provide ice for patient [patients'] service and treatment.

(l) Emergency equipment storage. Space shall be provided for a crash cart and other necessary [similar] emergency equipment.

(m) Equipment storage room. Space shall be provided for necessary equipment. [such as inhalators shall be provided.]

(n) Patient [Patients'] storage facilities. Individual lockers shall be provided for the storage of a patient's [patients'] clothing and personal effects. The [These] lockers may be located outside the intensive care unit. Lockers shall be of a size to permit hanging of full length garments.

(o) Waiting room. A separate waiting room shall be provided for [family members and others who may be permitted to visit] the intensive care unit [patients] A toilet room, public telephone, and seating accommodations for long waiting periods shall be provided.

Section 8. Obstetrical Suite. (1) General. If an obstetrical suite is included in the functional [narrative] program, it shall be located and arranged to preclude unrelated traffic through the suite. The number of delivery rooms, labor rooms, recovery beds, and the size [sizes] of the service areas shall depend upon the estimated obstetrical workload.

(2) Delivery room [room(s)]. Each room shall have a minimum clear floor area of 300 square feet exclusive of fixed and movable cabinets and shelves. The room shall have [with] a minimum dimension of sixteen (16) feet.

(3) Labor room. Each room [room(s). These rooms] shall be a single-bed or two (2) bed room [rooms] with a minimum clear area of 100 square feet per bed.

(a) Labor beds shall be provided at the rate of two (2) for each delivery room.

(b) Each labor room shall contain a lavatory equipped for hand washing and have direct access to a toilet room. One (1) toilet room may serve two (2) labor rooms.

(c) The labor room [Labor rooms] shall be arranged so that the door is [doors are] visible from a nurses' work station and shall be directly accessible to facilities for medication, hand washing, charting and storage for supplies and equipment.

(d) At least one (1) shower shall be provided for use by labor room patients [shall be provided].

(e) Controls shall be located outside of the wet area for use by nursing staff.

(4) Recovery room. The recovery room [It] shall contain not less than two (2) beds, charting facilities located to permit staff surveillance of all beds, facilities for medicine dispensing, hand washing facilities, clinical sink with bedpan flushing device, and storage for equipment and supplies. The recovery room may be omitted in hospitals with an annual birth rate of less than 1,500.

(5) Service areas. The service areas in each obstetrical suite[. The services] shall include:

(a) Control station located to permit visual surveillance of all traffic which enters the obstetrical suite.

(b) Supervisor's office or station.

(c) Sterilizing equipment [facilities with high speed autoclave(s)] conveniently located to serve [all] delivery rooms.

(d) Drug distribution station for storage and preparation of medication for patients. The drug distribution station [It] shall contain a work counter, storage facilities, and a sink equipped for hand washing. Controlled substances shall be under double lock.

(e) Scrub facilities. Two (2) scrub stations shall be provided near the entrance to each delivery room. [However,] Two (2) scrub stations may serve two (2) delivery rooms if the scrub stations are located adjacent to the entrance to each delivery room.

(f) Soiled workroom for the exclusive use of the obstetrical suite staff or a soiled holding area that is part of a system used for the collection and disposal of soiled materials.

1. A [The] soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle.

2. A soiled holding room shall be similar to the soiled workroom except that the clinical sink may be omitted.

(g) Clean workroom or [a] clean supply room.

1. A clean workroom is required if [when] clean materials are assembled within the obstetrical suite prior to use. A clean workroom shall contain a work counter, sink equipped for hand washing, and space for clean and sterile supplies.

2. A clean supply room shall be provided if [when] the facility utilizes a central system for the cleanup, distribution of clean and sterile supplies, and central storage.

(h) Anesthesia workroom. A workroom for cleaning, testing and storage of anesthesia equipment[. It] shall contain a work counter and sink.

(i) Anesthesia storage facilities.

(j) Medical gas supply with storage space for reserve medical gas cylinders shall be provided.

(k) Equipment storage room [room(s)] for equipment used in the obstetrical suite.

(l) Staff clothing change areas.

1. Appropriate areas shall be provided for male and female personnel [(technicians, nurses, aides, and doctors)] working within the obstetrical suite.

2. Each area [The areas] shall contain lockers, showers, toilets, lavatories equipped for hand washing and space for putting on scrub suits and boots.

3. Each area [These areas] shall be arranged to provide a one (1) way traffic pattern, so that personnel entering from outside the obstetrical suite can shower, change and go directly into the obstetrical suite.

4. Space for removal of scrub suits and boots in the change area shall be designed so that personnel using it will avoid physical contact with clean personnel.

(m) Lounge and toilet facilities for obstetrical staff A nurses' toilet room shall be provided near the labor rooms and recovery rooms [room(s)].

(n) Janitor's closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the obstetrical suite.

(o) Stretcher storage area. This area shall be out of the direct line of traffic.

Section 9. Newborn Nursery Unit. (1) General. Each nursery shall provide:

(a) One (1) Lavatory for hand washing [at the rate of one (1)] for each eight (8) infants;

(b) Emergency nurses' call system;

(c) Oxygen;

(d) Isolation nursery; and

(e) Glazed observation windows to permit viewing of infants from public areas, from workrooms, and between adjacent nurseries.

(2) [Full-term] Nursery. Each room shall contain not more than eight (8) bassinets, or up [(this may be increased] to sixteen (16) bassinets if the extra bassinets are of the isolation type. The room shall have[) with] a minimum area of twenty-four (24) square feet per regular bassinet and forty (40) square feet per isolation type bassinet [bassinets]. No nursery shall open directly into another nursery.

(3) Workroom. Each nursery shall be served by a connecting workroom. It shall contain gowning facilities at the entrance for staff and housekeeping personnel, work space with counter, refrigerator, lavatory or sinks equipped for hand washing, and storage. One (1) workroom may serve a number of full-term nurseries if [provided that] required services are convenient to each.

(4) Examination and treatment room. The examination and treatment room [it] shall contain a work counter, storage, and lavatory equipped for hand washing.

(5) Continuing care [Premature and special care] nursery. If a continuing care nursery is provided, [A premature nursery is required only for hospitals with twenty-five (25) or more maternity beds.] each nursery shall have a minimum area of forty (40) square feet per bassinet. The continuing care [premature] nursery shall have its own workroom including lavatory. [(]A work area within the continuing care [premature] nursery may be used for the workroom, but this area shall be in addition to the required bassinet area [)]

(6) Formula room. This room shall be used solely for [is intended for the sole purpose of] preparing the infant formula and shall have no direct access to the nursery or workroom. The formula room [it] may be located elsewhere in the hospital. The following shall be provided unless commercially [-]prepared formula is used:

(a) Work counter with built-in sink with gooseneck-type spout and knee or foot control;

(b) Lavatory;

(c) Hot plate;

(d) Refrigerator;

(e) Sterilizer [(autoclave)]; and

(f) Bottle washer.

(7) If commercially prepared formula is to be used or other modifications are proposed in formula preparation and processing, the formula room shall include such space and equipment as [are] necessary to accommodate formula processing, handling, and storage requirements.

(8) Janitor's closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the newborn nursery unit. [This closet for exclusive use in the nursery shall contain floor receptor or service sink and space for supplies and cleaning equipment.]

Section 10. Pediatric Unit. If provided as a separate unit, the pediatric unit [it] shall include:

(1) Patient rooms. Each pediatric patient room [rooms] shall conform to the same requirements as Section 6(1)(b) and (c) of this administrative regulation except that a patient room [rooms] used for cribs shall contain at least sixty (60) square feet of clear area for each crib and shall have [with] no more than six (6) cribs in a room.

(2) Nursery. Each nursery serving pediatric patients shall contain no more than eight (8) bassinets. The minimum clear floor area per bassinet shall be forty (40) square feet. Each room shall contain a lavatory equipped for hand washing, nurses' emergency calling system and glazed view windows for observation of infants from public areas and the workroom.

(3) Nursery workroom [workrooms]. Each nursery shall be served by a connecting workroom. The workroom [it] shall contain gowning facilities at the entrance for staff and housekeeping personnel, work space with counter, storage facilities, and a lavatory or sink equipped for hand washing. One (1) workroom may serve more than one (1) nursery.

(4) The examination and treatment room for a nursery [nursery(ies)] may be located in a separate room or a designated part of the workroom. The examination and treatment room [it] shall contain a work counter, storage facilities, and a lavatory equipped for hand washing.

(5) Service areas. The service areas shall conform to the requirements in Section 6(2) of this administrative regulation and shall meet the following additional conditions:

(a) Multipurpose or individual room [room(s)] shall be provided for dining, educational, and play purposes. A total floor area of twenty (20) square feet per pediatric patient based on fifty (50) percent of the total number of pediatric patients shall be provided. Special provisions shall be made to minimize [the] impact noise transmission through the floor of the multipurpose room [room(s)] to occupied space [spaces] below.

(b) Space for preparation and storage of infant formula shall be provided in the unit or in a convenient location nearby.

(c) Toilet room. A toilet room shall be provided for each sex, with a minimum ratio of one (1) toilet for each eight (8) beds excluding bassinets.

(d) Storage closets or cabinets for toys and for educational and recreational equipment shall be provided.

(e) Storage space shall be provided for replacement of cribs and adult beds to provide flexibility for interchange of patient accommodations.

Section 11. Psychiatric Unit. If included as a separate unit, the psychiatric unit [it] shall be designed as other nursing units except that care shall [must] be taken to provide for patients needing close supervision to prevent the patient's escape, suicide, or hiding. The unit shall contain:

(1) Patient room. Each patient room shall meet the following requirements:

(a) Minimum floor area of 100 square feet in a one (1) bed room [rooms] and eighty (80) square feet per patient in a multibed room [rooms].

(b) Maximum of two (2) patients per room.

(c) Patient toilet room [rooms]. A toilet room shall be directly accessible from each patient room without going through the general corridor. One (1) toilet room may serve two (2) patient rooms.

(d) Lavatory. A lavatory shall be provided in each patient room. If the patient room is served by its own private toilet room, the lavatory may be located in the toilet room.

(e) Window.

1. Sill height shall not be higher than three (3) feet above the floor.

2. Windows in a psychiatric unit [units] shall be of security type or a type that can only be opened by keys or tools that are under the control of staff. The degree of security required shall be as determined by program, but operation of sash shall be restricted to inhibit possible tendency for escape or suicide.

3. Safety [Where glass fragments may create a hazard, safety] glazing or [and/or] other appropriate security features shall be incorporated if glass fragments may create a hazard.

(f) A nurses' calling system is not required. If a call system is included, provisions shall be made to permit removal of call buttons or [and/or] use of blank plates as appropriate.

(g) The visual privacy provided each patient shall isolate patients from one another but not from observation by staff.

(h) Bedpan flushing devices may be omitted from patient room toilets.

(2) Service areas. Service [These] areas shall conform to the requirements in Section 6(2) of this administrative regulation and shall meet the following additional conditions:

(a) Provide separate space for occupational therapy at the rate of fifteen (15) square feet per patient and a minimum area of 400 square feet.

(b) A minimum of two (2) separate social spaces, one (1) appropriate for noisy activities and the other for quiet activities, shall be provided. The combined area shall be a minimum of [not be less than] thirty (30) square feet per patient with a minimum of [not less than] 120 square feet for each of the two (2) spaces, whichever is greater. This space may be shared by dining activities.

(c) Storage for recreational and occupational therapy equipment.

(d) Storage for patients' belongings.

(e) Bathing facilities. Bathtubs or showers shall be provided at the rate of one (1) for each four (4) beds which are not individually served. At least one (1) bathing facility shall have space for a wheelchair patient and [with] an assisting attendant.

(3) Seclusion room [room(s)]. A seclusion room shall be provided for a patient [patients] requiring security and protection from [either] himself or others.

(a) The room shall be located in a manner affording direct supervision of the patient by the nursing staff.

(b) The room [It] shall be a single room and shall be constructed to minimize the possibility of a patient's hiding, escape, injury, or suicide.

(c) There shall be a minimum of one (1) seclusion room for every twenty-four (24) beds.

(d) [The seclusion room(s) is intended for short-term occupancies by patients who may have become violent or suicidal; therefore, special fixtures, hardware, etc., including] Ground fault interrupters for electrical circuits and tamper-proof screws shall be used.

(e) Doors shall swing outward and shall have provisions for staff observation while maintaining privacy from the public and other patients.

Section 12. Surgical Suite. (1) General. If a surgical suite is included in the functional [narrative] program, the surgical suite [it] shall be located and arranged to preclude unrelated traffic through the suite. The number of operating rooms and recovery beds, including the size of the service areas, shall be based on the expected surgical workload.

(2) Operating room [room(s)]. Each operating room shall have a minimum clear floor area of 360 square feet, exclusive of fixed and movable cabinets and shelves, with a minimum dimension of eighteen (18) feet. Storage space for splints and traction equipment shall be provided for rooms equipped for orthopedic surgery. At least two (2) x-ray film illuminators shall be provided in each operating room. [shall be provided.]

(3) Room [Rooms] for surgical cystoscopy and other endoscopic procedures. The procedure [These] room shall have a minimum clear area of 250 square feet, exclusive of fixed and movable cabinets and shelves, with a minimum dimension of fifteen (15) feet. Facilities shall be provided for the disposal of liquid wastes [shall be provided].

(4) Recovery room. A room shall be provided [room(s). Room(s)] for post anesthesia recovery of surgical patients [shall be provided] and shall contain a drug distribution station, handwashing facilities, charting facilities, clinical sink, and storage space for supplies and equipment. The design shall provide for a minimum [of] three (3) foot clearance to each side of the recovery bed [beds].

(5) Medical preparation and holding area. A room [Room(s)] shall be provided for medical preparation of patients and holding prior to surgery. The room [It] shall contain a drug distribution station, hand-washing facilities, and charting facilities. The design shall provide for a minimum [of] three (3) foot clearance to each side of the bed [beds] This area may be eliminated if the medical preparation of a patient [patients] prior to surgery is done in the patient room [bedrooms].

(6) Service areas in each surgical suite. The services shall include:

(a) Control station located to permit visual surveillance of [all] traffic which enters the surgical suite,

(b) Sterilizing facilities with high speed autoclaves [autoclave(s)] located near [nearby] the operating room [rooms];

(c) Drug distribution station for storage and preparation of medication for patients. The station [It] shall contain a work counter, storage facilities, and a sink equipped for hand washing. Controlled substances shall be under double lock;

(d) Scrub facilities. Two (2) scrub stations shall be provided near the entrance to each operating room. [However,] two (2) scrub stations may serve two (2) operating rooms if the scrub stations are located adjacent to the entrance to each operating room;

(e) Soiled workroom for the exclusive use of the surgical suite staff or a soiled holding area that is part of a system used for the collection and disposal of soiled materials.

1. A [The] soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle.

2. A soiled holding room shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted;

(f) Clean workroom or a clean supply room. A clean workroom is required if [when] clean materials are assembled within the surgical suite prior to use. A clean workroom shall contain a work counter, sink equipped for hand washing, and storage space for clean and sterile supplies. A clean supply room shall be provided if [when] the facility utilizes a central system for the cleanup, distribution of clean and sterile supplies, and central storage;

(g) Anesthesia workroom. The workroom for cleaning, testing, and storage of anesthesia equipment[. It] shall contain a work counter and sink;

(h) Anesthesia storage facilities;

(i) Medical gas supply with storage space for reserve medical gas cylinders shall be provided;

(j) Storage room [room(s)] for equipment and supplies used in the surgical suite;

(k) Staff clothing change areas. Appropriate areas shall be provided for male and female personnel [(orderlies, technicians, nurses and doctors)] working within the surgical suite.

1. The change areas shall contain lockers, showers, toilets, lavatories equipped for hand washing and space for putting on scrub suits and boots.

2 The change [These] areas shall be arranged to provide a one (1) way traffic pattern so that personnel entering from outside the surgical suite can shower, change, and go directly into the surgical suite.

3 Space for removal of scrub suits and boots in the change area shall be designed so that personnel using it will avoid physical contact with clean personnel;

(l) Outpatient surgery change area. If the functional program includes outpatient surgery, a separate area shall be provided for an outpatient to change from street clothing into a hospital gown. The change area [areas. If the narrative program includes an outpatient surgery load, a separate area shall be provided where outpatients can change from street clothing into hospital gowns and are prepared for surgery. This] shall include a waiting room, lockers, toilets, and clothing change or gowning area with a traffic pattern similar to that of the staff clothing change area;

(m) Outpatient recovery. If the functional program [narrative] includes outpatient surgical services, provisions shall be made for a separate postrecovery area for outpatients;

(n) Patient's holding area. In facilities with two (2) or more operating rooms, a room or alcove shall be provided to accommodate stretcher patients waiting for surgery. The holding [This] area shall be under the visual control of the surgical suite control station. If a separate room for medical preparation of patients is provided as called for under Section 12(5) [11(5)] of this administrative regulation, this holding area will not be required;

(o) Stretcher storage areas. This area shall be out of direct line of traffic;

(p) Lounge and toilet facilities for surgical staff. These facilities shall be located to permit use without leaving the surgical suite. A nurses' toilet room shall be provided near the recovery rooms [room(s)]; and

(q) A janitor's closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided for exclusive use in the surgical suite.

Section 13. Outpatient and Emergency Suite. (1) General. Facilities for emergency and outpatient clinic care shall be provided if included in the functional program [narrative plan].

(2) Emergency patient care services. The extent of the emergency services to be provided in the hospital shall [will] depend upon the community needs and the availability of other organized programs for emergency care within the community. The facilities shall be located to prevent outpatients from traversing inpatient areas and shall include:

(a) Entrance at grade level which is sheltered from the weather and has convenient access for ambulances and wheelchairs.

(b) Reception and control area located near the entrance, waiting area, [area(s)] and treatment room [room(s)].

(c) Public waiting area with toilet facilities, public telephone, and drinking fountain.

(d) Examination and treatment room [room(s)]. Hand-washing facilities shall be provided in each room. Each room shall have a minimum floor area of 120 square feet with a minimum dimension of ten (10) feet.

(e) Emergency room for minor surgical procedures. The minor surgical procedures room [it] shall contain a hand-washing facility and shall have a minimum floor area of 240 square feet. The minimum dimension shall be fifteen (15) feet.

(f) Clean workroom. The clean workroom [it] shall contain a work counter, sink equipped for hand washing, and storage space for clean and sterile supplies.

(g) Soiled workroom. The soiled workroom [it] shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle.

(h) Drug distribution station for storage and preparation of medication. The drug distribution station [it] shall contain a work counter, storage facilities, and sink equipped for hand washing. Controlled substances shall be under double lock.

(i) Nurses' station for nurses' charting, doctors' charting, communications and storage for supplies and nurses' personal effects.

(j) Staff toilet room.

(k) Patient's toilet room[. It shall be] located convenient to the treatment room [room(s)].

(l) Wheelchair and stretcher alcove located convenient to the entrance to the department.

(m) Janitor's closet. The janitor's closet [it] shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment for exclusive use in the emergency department.

(n) Equipment storage room.

(3) Outpatient department. If outpatient services are provided, the extent of the administrative, clinical, and diagnostic facilities [to be] provided shall [will] depend on the estimated patient load as described in the functional program. [narrative. The planning of] Outpatient facilities shall provide for the privacy and dignity of the patient during interview, examination, and treatment. Facilities shall be located so that outpatients do not traverse inpatient areas and the following shall be provided:

(a) Entrance at grade level which is sheltered from weather and able to accommodate wheelchair access.

(b) Reception and control area located near the entrance and waiting area [area(s)].

(c) Wheelchair storage out of the line of direct traffic.

(d) Public waiting area with toilet facilities, public telephone, and drinking fountain.

(e) Interview space [space(s)] for private interviews relating to social service, credit and admissions.

(f) General or individual office [office(s)] for business transaction, records, administrative, and professional staff [staffs].

(g) Multipurpose room [room(s)] for conferences, meetings, and health education purposes. The multipurpose room [it] shall be equipped for the use of visual aids.

(h) General purpose examination room [room(s)] for medical, obstetrical, and similar examinations. Each room shall have a minimum floor area of eighty (80) square feet, excluding such spaces as vestibule, toilet, closet, and work counter. An examination table shall be placed to provide at least thirty (30) inches clearance to each side and at the foot of the table. A lavatory or sink equipped for hand washing shall be provided in each room.

(i) Special purpose examination rooms. Room sizes for special clinics [such as eye, dental, ear, nose and throat examinations] shall be determined by the types of equipment used but shall be not less than eighty (80) square feet. A lavatory or sink equipped for hand washing shall be provided in each room.

(j) Observation room [room(s)] for handling of isolation, suspect, or disturbed patients. The observation room [it] shall be located convenient to the nurses' station to permit close observation of patients. In facilities having [an annual patient load of] 15,000 or less annual outpatients, a separate room shall [will] not be required if an examination room is modified to accommodate this function.

(k) Patient toilet facilities shall be provided. [The number required will depend on the actual patient load of the department.]

(l) Nurses' station for nurses' charting, doctors' charting, communications, and storage for supplies and nurses' personal effects.

(m) Staff toilet room located convenient to the nurses' station.

(n) Clean workroom. The clean workroom [it] shall contain a work counter, sink equipped for hand washing, and storage space for clean and sterile supplies.

(o) Soiled workroom. The soiled workroom [it] shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for hand washing, waste receptacle, and linen receptacle.

(p) Drug distribution station for storage and preparation of medication. The drug distribution station [it] shall contain a work counter, sink equipped for hand washing, and storage facilities. Controlled substances shall be under double lock.

(q) Wheelchair and stretcher alcove located convenient to the entrance to the department.

(r) Janitor's closet. The janitor's closet [it] shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment for exclusive use in the outpatient department.

(s) Equipment storage room.

Section 14. Radiology Suite. The radiology [This] suite shall contain the following:

(1) Radiographic room [room(s)],

(2) Film processing facilities;

(3) Viewing and administrative area [area(s)];

(4) Film storage facilities;

(5) Toilet room with hand-washing facility. The toilet room [it] shall be [located directly] accessible from each fluoroscopy room without entering the general corridor area;

(6) Dressing area [area(s)] for ambulatory patients with convenient access to toilets;

(7) Waiting room or alcove for ambulatory patients;

(8) Holding area for stretcher patients. The holding area for stretcher patients [it] shall be located out of the direct line of normal traffic; and

(9) Hand-washing facilities shall be provided in each radiographic room unless the room is used only for routine diagnostic screening, [such as for chest x-rays.]

Section 15. Laboratory Suite. Facilities shall be provided for the following and the size of the areas including equipment shall [will] depend on the patient workload:

(1) Hematology;

(2) Clinical chemistry. An acid-shower and eye washing facility shall be provided nearby;

(3) Urinalysis. A specimen toilet with hand-washing facility shall be provided nearby;

(4) Cytology;

(5) Bacteriology;

(6) Waiting area for ambulatory patients;

(7) Administrative support areas;

(8) Blood storage facilities;

(9) Blood specimen collection area. The collection area [it] shall contain a work counter, hand-washing facilities, and space for patient seating;

(10) Glass-washing and sterilizing facilities; and

(11) Recording and filing facilities.

Section 16. Physical Therapy Suite. If a physical therapy suite is addressed in [included by] the functional [narrative] program, the following items shall be provided:

(1) Office space;

(2) Waiting space;

(3) Treatment areas [area(s)] for thermotherapy, diathermy, ultrasonics, and hydrotherapy.[, etc.] Cubicle curtains around each individual treatment area shall be provided for privacy purposes. Hand-washing facilities shall be provided, but one (1) lavatory or sink may serve more than one (1) treatment cubicle. Facilities for collection of wet and soiled linen or other material shall be provided,

(4) Exercise area [~~area(s)~~];
(5) Storage for clean linen, supplies, and equipment;
(6) Patient [~~Patients'~~] dressing areas, showers, lockers, and toilet rooms;
(7) Janitor's closet with floor receptor or service sink and storage space for housekeeping supplies and equipment; and
(8) Wheelchair and stretcher storage area.

Section 17. Morgue and Autopsy. (1) If autopsies are performed within the hospital, the following shall be provided:
(a) Refrigerated facilities for body-holding.
(b) Autopsy room. This room shall contain the following:
1. Work counter with sink equipped for hand washing;
2. Storage space for supplies, equipment and specimens;
3. Autopsy table;
4. Clothing change area with shower, toilet, and lockers; and
5. A janitor's closet containing a floor receptor or service sink with storage for housekeeping supplies and equipment for exclusive use in this area.
(2) If autopsies will be performed outside the hospital, only a well-ventilated body-holding room shall be provided.

Section 18. Pharmacy or Drug Room. An [~~If drugs are used, an~~] adequate supply of drugs and other medicinal agents shall be available at all times to meet the requirements of the hospital. Drugs [~~They~~] shall be stored in a safe manner and shall be kept properly labeled and accessible. Controlled substances and other dangerous or poisonous drugs shall be handled in a safe manner to protect against [~~their~~] unauthorized use. Controlled substances shall [~~must~~] be under double lock. There shall be adequate refrigeration for biologicals and drugs which require refrigeration. The existing laws, rules, and administrative regulations governing drugs and poisons shall be complied with.

Section 19. Dietary Department. Food service facilities shall be designed and equipped to meet the requirements of the functional [~~narrative~~] program. If a commercial service will be used, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling. If on-site conventional food preparation is used, the [~~The~~] department shall include the following facilities: [~~unless an acceptable commercially prepared dietary service, meals, and/or disposables are to be used. If a commercial service will be used, dietary areas and equipment shall be designed to accommodate the requirements for sanitary storage, processing, and handling.~~]
(1) Control station for the receiving of food supplies;
(2) Food preparation facilities. Conventional food preparation systems shall have [~~require~~] space and equipment for food preparation [~~preparing~~], cooking, and baking. Convenience food service systems [~~such as frozen prepared meals, bulk packages entrees, and individual package portions,~~] or systems using contractual commissary services shall have [~~require~~] space and equipment for thawing, portioning, cooking, and [~~and/or~~] baking;
(3) Hand-washing facilities [~~facility(ies)~~] located conveniently accessible in the food preparation area;
(4) Patient meal [~~Patients' meals~~] service facilities[~~. Examples are these~~] required for tray assembly and distribution;
(5) Dishwashing space. The dishwashing equipment [~~It~~] shall be located in a [~~the~~] room or alcove separate from the food preparation and serving area. Commercial-type dishwashing equipment shall be provided. Space shall [~~also~~] be provided for receiving, scraping, sorting, and stacking of soiled dishware and tableware prior to cleanup. The area shall be designed to allow clean dishware and tableware to be removed at a different location than the one used for the soiled dishware and tableware. A hand-washing lavatory shall be conveniently located;
(6) Pot-washing facilities;
(7) Refrigerated storage to accommodate a three (3) day minimum supply;
(8) Dry storage to accommodate a three (3) day minimum supply;
(9) Storage areas and sanitizing facilities for cans, carts, and mobile tray conveyors;
(10) Waste storage facilities shall be located in a separate room easily accessible to the outside for direct pickup or disposal;
(11) Dining space for ambulatory patients, staff, and visitors;
(12) Offices [~~Office(s)~~] or desk spaces for dieticians or the dietary service manager;
(13) Toilets with hand-washing facilities for use by the dietary staff shall be immediately available; and
(14) Janitor's closet located within the department. The janitor's closet [~~It~~] shall contain a floor receptor or service sink with storage for housekeeping supplies and equipment to be used exclusively in this area.

Section 20. Administrative and Public Areas. The following shall be provided:
(1) Lobby. The lobby [~~It~~] shall include:
(a) Storage space for wheelchairs;
(b) Reception and information counter or desk;
(c) Waiting space [~~space(s)~~]; and
(d) Public toilet facilities designed for use by the physically handicapped.
(2) Interview space [~~space(s)~~] for private interviews relating to social services, credit, and admissions;
(3) Director of nurses' office;
(4) Staff toilet rooms;
(5) Medical library facilities;
(6) General or individual offices [~~office(s)~~] for business transactions, medical and financial records, administrative, and professional staff use;
(7) Administrator's office;
(8) Multipurpose room [~~room(s)~~] for conferences, meetings, and health education purposes, including provisions for showing visual aids; and
(9) Storage for office equipment and supplies.

Section 21. Medical Records Unit. This unit shall include:
(1) Medical records administrator or[~~/~~] technician office or space;
(2) Active record storage area;
(3) Record review and dictating room; and
(4) Work area for sorting, recording, or microfilming.

Section 22. Central Medical and Surgical Supply Department. The following areas shall be permanently separated from each other:
(1) Receiving and decontamination room. The room [~~It~~] shall contain work space and equipment for cleaning medical and surgical equipment and for the disposal [~~of~~] or processing of unclean material. Hand-washing facilities shall be provided.
(2) Clean workroom. This room shall be divided into work space, clean storage area and sterilizing and sanitizing facilities. Hand-washing facilities shall be provided.
(3) Storage area for clean supplies and sterile supplies. The storage area may [~~May~~] be in a designated area in the clean workroom [~~.~~]
(4) Equipment storage.
(5) Cart storage, if this type of system is utilized.
(6) Janitor's closet. The janitor's closet [~~It~~] shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment to be utilized exclusively in this department.

Section 23. Central Stores. The following shall be provided:
(1) Off-street unloading facilities;
(2) Control station for receiving supplies; and
(3) General storage rooms which are adequate in size to meet the needs of the facility.

Section 24. Laundry. On-site processing and off-site processing.
(1) If linen is to be processed in the hospital, the following shall be provided:
(a) Soiled linen receiving, holding and sorting room with hand-washing facilities;
(b) Laundry processing room with commercial-type equipment which can process seven (7) days of linen needs within a regularly

scheduled work week. Hand-washing facilities shall be provided;[.]

(c) Storage for laundry supplies;[.]

(d) Clean linen inspection and mending room;[.]

(e) Clean linen storage, issuing and holding room or area,[.]

(f) Janitor's closet. The janitor's closet [It] shall contain a floor receptor or service sink with storage space for housekeeping supplies and equipment to be utilized exclusively in this department; and[.]

(g) Cart storage and cart sanitizing facilities.

(2)[(h)] Arrangement of equipment and procedures shall [be in a manner to] permit an orderly work flow with a minimum of cross traffic to maintain separation of [that might mix] clean and soiled operations.

(3)[(2)] If linen is to be processed off the hospital site, the following shall be provided:

(a) Soiled linen holding room with a hand-washing facility conveniently accessible; and[.]

(b) Clean linen receiving, holding, inspection and storage room [room(s)].

Section 25. Employee [Employee's] Facilities. (1) Female locker room. This room shall have lounge space, lockers for personal effects, and a separate toilet room. The area shall be designed for use by the physically handicapped. [In some cases] Shower facilities may be appropriate depending on the size of the facility.

(2) Male locker room. This room shall have lockers and a separate toilet room. The area shall be designed for use by the physically handicapped. [In some cases] Shower facilities may be appropriate depending on the size of the facility.

Section 26. Engineering Service and Equipment Areas. The following shall be provided:

(1) Room [Room(s)] or separate buildings [building(s)] for boilers, mechanical equipment and electrical equipment;

(2) Engineer's office;

(3) Maintenance shop;

(4) Storage room for building maintenance supplies;

(5) Storage room for central housekeeping equipment and supplies;

(6) Office and administrative support space for the person [person(s)] in charge of central housekeeping; and

(7) Yard equipment storage.

Section 27. Waste Processing Services. The following shall be provided.

(1) Waste storage and disposal. Space and facilities shall be provided for the sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques.

(2) A gas, electric, or oil-fired incinerator shall be provided for the complete destruction of pathological and infectious waste. Infectious waste shall include, but not be limited to: dressing and material from open wounds, laboratory specimens, and all waste material from isolation patient rooms.

(3) Waste tissue and contaminated combustible solids shall be rendered safe by [such methods as] sterilization or incineration.

(4) Culture plates, tubes, sputum cups, contaminated sponges, and swabs [and the like] shall be sterilized before they are washed or discarded.

(5) Unpreserved tissue specimens from surgical or necropsy material shall [must] be disposed of by incineration.

Section 28. Details and Finishes. [All] details and finishes shall meet the following requirements.

(1) Details.

(a) Doors to patient toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of two (2) feet and ten (10) inches.

(b) [All] doors to patient-room toilets and patient-room bathrooms shall swing outward or be equipped with hardware that will permit access in an emergency.

(c) If required by the functional [narrative] program, suitable hardware shall be provided on doors to patient toilet rooms in psychiatric nursing units so that access to these rooms can be controlled by the nursing staff.

(d) Windows and outer doors which may be frequently left in an open position shall be provided with screens.

(e) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use by wheelchairs and carts.

(f) [The location and arrangement of] lavatories and sinks shall be equipped with blade handles which [for hand-washing purposes] shall have [provide] a minimum of sixteen (16) inches clearance to each side of the centerline of the fixture.

(g) Towel dispensers or other hand-drying equipment shall be provided at [all] lavatories and sinks equipped for hand washing, except scrub sinks.

(h) Grab bars shall be provided at patient [all patients'] toilets, showers, tubs, and sitz baths The bars shall have one and one-half (1 1/2) inches clearance to walls and shall be of sufficient strength and anchorage to sustain a concentrated load of 250 pounds for a period of five (5) minutes.

(i) Recessed soap dishes shall be provided at [all] showers and bathtubs.

(j) Mirrors shall not be installed at hand-washing fixtures in food preparation areas, [or in sensitive areas such as] nurseries, clean and sterile supply rooms or [supplies, and] scrub sink areas [sinks].

(k) Radiation protection requirements of facilities where sources of radiation are used or stored [x-ray and gamma ray installations] shall be approved by the Radiation Health [and Product Safety] Branch, Division of Public Health Protection and Safety [Office of Consumer Health Protection], Department for Public Health [Services], Cabinet for Health and Family Services [Human Resources].

(l) Ceiling heights shall be as follows:

1. Boiler room ceiling height shall be at least [not less than] two (2) feet and six (6) inches above the main boiler header and connecting piping with a minimum height of nine (9) feet.

2. Ceiling height of corridors, storage rooms, patient toilet rooms, and other minor rooms shall be at least [not less than] seven (7) feet and six (6) inches.

3. Radiographic, operating and delivery rooms, and other rooms containing ceiling-mounted equipment or ceiling-mounted surgical light fixtures shall have a height as required to accommodate the equipment or fixtures.

4. Ceilings of [All] other rooms shall be at least [not less than] eight (8) feet.

(m) Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed areas, delivery suites, operating suites, or nurseries unless special provisions are made to minimize transmission of [such] noise.

(n) Boiler rooms, laundries, food preparation areas and other rooms containing heat-producing equipment [such as boiler rooms, laundries, and food preparation areas] shall be insulated and ventilated to prevent any floor surface from exceeding a temperature of ten (10) degrees Fahrenheit above the ambient room temperature.

(o) Noise reduction criteria. Partition, floor, and ceiling construction in patient areas shall comply with Table 1, Section 33(1) of this administrative regulation.

(2) Finishes.

(a) Floor materials shall be easily cleanable and shall have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in food preparation [such] areas shall be resistant to food acids. In [all] areas subject to frequent wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet[, such as shower and bath areas, kitchen and similar work areas,] shall have a non-slip finish.

(b) Adjacent dissimilar floor materials shall be flush with each other to provide an unbroken surface.

(c) Walls generally shall be washable, and in the immediate area of plumbing fixtures the finish shall be smooth and moisture-resistant. Finish, trim, and floor and wall construction in dietary and food preparation areas shall be free of spaces that may [can] har-

bor rodents and insects.

(d) Wall bases in kitchens, operating rooms, delivery rooms, and other areas subject to frequent wet cleaning methods shall be made integral and coved with the floor, tightly sealed within the wall, and constructed without voids that may [can] harbor harmful bacteria.

(e) Ceilings shall be cleanable. Ceilings in [and those in sensitive areas such as] surgical, delivery, nursery, [rooms] and isolation rooms shall be readily washable and without crevices that may [can] retain dirt particles. Surgical, delivery, nursery, and isolation rooms and [These sensitive areas along with the] dietary and food preparation areas shall have a finished ceiling covering [all] overhead piping and ductwork. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.

(f) Acoustical type ceilings shall be provided for corridors in patient areas, nurses' stations, labor rooms, dayrooms, recreation rooms, dining areas, and waiting areas.

(g) Ceilings of patient rooms in psychiatric nursing units shall be of monolithic or bonded construction.

Section 29. Elevators. [General. All] Hospitals having [patients' facilities, such as] bedrooms, dining rooms, [or] recreation areas, [or critical services, such as] operating rooms, delivery rooms, diagnostic, or therapy areas, located on other than the main entrance floor, shall have elevators.

(1) Number of elevators.

(a) At least one (1) hospital-type elevator shall be installed if [where] one (1) to fifty-nine (59) patient beds are located on any floor other than the main entrance floor.

(b) At least two (2) hospital-type elevators shall be installed if [where] sixty (60) to 200 patient beds are located on floors other than the main entrance floor, or if [where] the major inpatient services are located on a floor other than those containing patient beds.

(c) At least three (3) hospital-type elevators shall be installed if [where] 201 to 350 patient beds are located on floors other than the main entrance floor, or if [where] the inpatient services are located on a floor other than those containing patient beds.

(d) If a hospital has [For hospitals with] more than 350 beds, the number of elevators shall be determined from a study of the hospital plan and the estimated vertical transportation requirements.

(2) Cars and platforms. Cars of hospital-type elevators shall have inside dimensions that will accommodate a hospital bed and attendant and shall be at least five (5) feet wide by seven (7) feet and six (6) inches deep. The car door shall have a minimum clear opening of at least [not less than] three (3) feet and eight (8) inches.

(3) Leveling. Elevators shall have automatic leveling of the two (2) way automatic maintaining type with accuracy within plus or minus one-half (1/2) inch.

(4) Operation. Elevators, except freight elevators, shall be equipped with a two (2) way special service switch to permit cars to bypass [all] landing button calls and be dispatched directly to any floor.

Section 30. Construction. (1) Design. Every building and every portion thereof shall be designed and constructed to sustain [all] dead and live loads in accordance with accepted engineering practices and standards, including seismic forces if [when] applicable.

(2) Foundations. Foundations shall rest on natural solid bearing if a satisfactory bearing is available at reasonable depths. Proper soil-bearing values shall be established in accordance with recognized standards. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles, augured piles, poured caissons, or an equivalent designed to support the intended load without detrimental settlement, except that one (1) story buildings may rest on a fill designed by a soils engineer. If [When] engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and a certification of compliance with the job specifications. [All] Footings shall extend to a depth not less than one (1) foot below the estimated frost line.

(3) Natural disasters. Special provisions shall be made in the design of buildings in geographic areas where local experience reflects loss of life or extensive damage to buildings resulting from tornadoes or floods.

Section 31. Mechanical Requirements. (1) General. Prior to completion of the contract and final acceptance of the facility, the architect or [and/or] engineer shall obtain from the contractor certification in writing that [all] mechanical systems have been tested and that the installation and performance of these systems conform with the final plans and specifications.

(2) Incinerators. The design and installation shall comply with the applicable state regulations [current Kentucky standards] for control of air contaminants for incinerators [administrative regulations as applicable to hospitals].

(3) Steam and hot water systems.

(a) Boilers. If boilers are used, a minimum of two (2) shall be provided and the combined capacity of the boilers shall [, based upon the published Steel Boiler Institute or Institute of Boiler and Radiation Manufacturer's net rating, must] be able to supply 150 percent of the normal requirements for [all] systems and equipment in the facility.

(b) Boiler accessories. Boiler feed pumps, condensate return pumps, fuel oil pumps, and circulation pumps shall be connected and installed to provide normal and standby service

(c) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends, except that vacuum condensate returns need not be valved at each piece of equipment.

(4) Thermal and acoustical installation.

(a) Insulation shall be provided on the following within the building

1. Boilers, smoke breeching, and stacks;

2. Steam supply and condensate return piping;

3. Hot water piping above 120 degrees Fahrenheit at [all] hot water heaters, generators, and converters;

4. Chilled water, refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point;

5. Water supply and drainage piping on which condensation may occur;

6. Air ducts and casings with outside surface temperature below ambient dew point or temperature above eighty (80) degrees Fahrenheit; and

7. Other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(b) Insulation on cold surfaces shall include an exterior vapor barrier.

(c) Duct linings shall not be used in systems supplying operating rooms, delivery rooms, recovery rooms, nurseries, isolation rooms of [and] intensive care units unless terminal filters of at least ninety (90) percent efficiency are installed downstream of the lining.

(5) Air-conditioning, heating, and ventilation systems.

(a) Temperatures and humidities.

1. The designed capacity of the systems shall provide the following temperatures and humidities in the areas noted below:

Area Designation	Temperature [Temperture] F.	Relative Humidity % (Min)	Relative Humidity % (Max)
Operating Rooms	68-76*	50**	60
Delivery Rooms	70-76*	50**	60
Recovery Rooms	75-80[30]	60	
Intensive Care Rooms	72-78*	30	60
Nurseries	75-80[30]	60	
Special Care Nursery	75-80*	30	60

*Variable temperature range required.

**Minimum relative humidity may be reduced to thirty (30) percent if the facility establishes a written policy prohibiting the use of flammable anesthetics.

2. For other areas occupied by inpatients, the indoor winter design temperature shall be seventy-five (75) degrees Fahrenheit. For all other occupied areas, the indoor winter design temperature shall be seventy-two (72) degrees Fahrenheit.

3. For all other occupied areas, the indoor summer design temperature shall be seventy-five (75) degrees Fahrenheit.

(b) Ventilation system details. [All] Air-supply and air-exhaust systems shall be mechanically operated. [All] Fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates as shown on Table 2, Section 33(2) of this administrative regulation[,] shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

1. Outdoor air intakes shall be located as far as practical but not less than twenty-five (25) feet from exhaust outlets of ventilation systems, combustion equipment stacks, medical surgical vacuum systems, plumbing vent stacks, or from areas which may collect vehicular or other noxious fumes. The bottom of outside air intakes serving central air systems shall be located as high as practical but not less than six (6) feet above ground level or, if installed above the roof, three (3) feet above roof level.

2. The ventilation systems shall be designed and balanced in accordance with the pressure relationship as shown in Table 2, Section 33(2) of this administrative regulation.

3. [All] Air supplied to [~~sensitive areas such as~~] operating rooms, delivery rooms, [and] nurseries, and other sensitive areas shall be delivered at or near the ceiling of the area served and [all] return/exhaust air shall be removed near floor level. At least two (2) return/exhaust outlets shall be provided in each operating room and delivery room.

4. [All] Room supply, return, and exhaust outlets shall be located not less than three (3) feet above finished floor [~~AFF~~].

5. Isolation rooms and intensive care rooms may be ventilated by induction units if the induction units contain only a reheat coil and if only the primary air from a central system passes through the reheat coil.

6. [All] Central ventilation or air-conditioning systems shall be equipped with filters having minimum efficiencies as listed below:

Area Designation	Minimum No.of Filters	Filter Efficiencies %	
		No 1.	No. 2
Sensitive Areas*	2	25	90
Patient Care, Treatment, Diagnostic and Related Areas	2	25	90**
Food Preparation and Laundry	1	80	--
Administrative, Storage, and Soiled Holding	1	25	--

*Includes operating rooms, delivery rooms, nurseries, recovery units and intensive care units

**May be reduced to eighty (80) percent for systems using all-outdoor air.

7. If [~~Where~~] two (2) filter beds are required in central ventilation and air-conditioning equipment, Filter Bed No. 1 shall be located upstream of the air-conditioning equipment and Filter Bed No. 2 shall be located downstream of the supply fan, any recirculating spray water system, or [~~and~~] water reservoir type humidifiers. If [~~Where~~] only one (1) filter bed is required, it shall be located upstream of the air-conditioning equipment unless an additional prefilter is employed. In this case, the prefilter shall be located upstream of the equipment and the main filter may be located further downstream.

8. [All] filter efficiencies as listed above shall be average atmospheric dust spot efficiencies tested in accordance with the "American Society of Heating, Refrigerating, and Air-Conditioning Engineers" (ASHRAE) Standard 52-76.

9. Filter frames shall be durable and carefully dimensioned, and shall provide an airtight fit with the enclosing ductwork. [All] Joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage [~~leakages~~].

10. A manometer or its equivalent shall be installed across each filter bed serving sensitive areas or central air systems.

11. Ducts which penetrate construction intended for x-ray or other ray protection shall not impair the effectiveness of the protection.

12. Laboratories shall be provided with outdoor air at a rate of two (2) air changes per hour. If this ventilation rate does not provide the air required to ventilate fume hoods and safety cabinets, additional outdoor air shall be provided. A filter with ninety (90) percent minimum efficiency shall be installed in the air supply system at its entrance to the media transfer room.

13. Laboratory hoods for general use shall have a minimum average face velocity of seventy-five (75) feet per minute. Hoods in which infectious or highly radioactive materials are processed shall have a face velocity of 100 feet per minute and each hood shall have an independent exhaust system with the fan installed at the discharge point of the system. Hoods used for processing infectious materials shall be equipped with a means of disinfection.

14. Duct systems serving hoods in which highly radioactive materials and strong oxidizing agents are used shall be constructed of stainless steel for a minimum distance of ten (10) feet from the hood and shall be equipped with washdown facilities.

15. Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment and reasonable temperatures in the rooms and in adjoining areas.

(6) Plumbing systems. [All] Plumbing systems shall be designed and installed in accordance with the applicable state plumbing regulations [~~requirements of the current Kentucky plumbing standards administrative regulations applicable to hospitals~~].

(a) Plumbing fixtures.

1. The material used for plumbing fixtures shall be of nonabsorptive acid-resistant material.

2. Lavatories and sinks required in patient care areas shall have the water supply spout mounted so that its discharge point is a minimum of five (5) inches above the rim of the fixture. [All] Fixtures used by medical and nursing staff and [all] lavatories used by patients and food handlers shall be equipped with valves which can be operated without the use of hands. If [~~Where~~] blade handles are used for this purpose, they shall not exceed four and one-half (4 1/2) inches in length, except that handles on scrub sinks and clinical sinks shall be not less than six (6) inches long.

3. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(b) Water supply systems.

1. Systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand periods.

2. Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

3. A backflow preventer or vacuum breaker [~~preventers (vacuum breakers)~~] shall be installed on hose bibbs, laboratory sinks, janitors' sinks, bedpan flushing attachments, autopsy tables, and [all] other fixtures to which hoses or tubing can be attached.

4. Flush valves installed on plumbing fixtures shall be of a quiet operating type.

5. Bedpan flushing devices shall be provided in each patient toilet room and in the soiled workrooms located in the patient nursing units.

6. An auxiliary water supply shall be available to provide potable water in case of emergencies.

(c) Hot water heating systems.

1. The hot water heating equipment shall have a sufficient capacity to supply water at the temperature and amounts indicated below:

	Use		
	[~~Use~~] Clinical	Dishwasher [~~Diswasher~~]	Laundry
Gal/hr/bed	6 1/2	4	4 1/2
Temp. F.	125	180*	160**

*Temperature may be reduced to 160 degrees Fahrenheit[,] if a chlorinizer is used. Required temperature must be provided

throughout the wash and rinse cycles.

**Required temperature of 160 degrees Fahrenheit is that measured in the washing machine and shall be supplied so that the temperature will be maintained over the entire wash and rinse cycles.

2. Storage tanks [~~tank(s)~~] shall be fabricated from [~~or~~] corrosive-resistant metal or be lined with noncorrosive material.

(d) Drainage systems.

1. Drain lines from sinks in which acid wastes may be poured shall be fabricated from an acid-resistant material.

2. Piping over operating and delivery rooms, nurseries, food preparation centers, food serving facilities, food storage areas, and other critical areas shall be kept to a minimum and shall not be exposed. Special precautions shall be taken to protect these areas from possible leakage or condensation from necessary overhead piping systems.

3. Floor drains shall not be installed in operating and delivery rooms. Flushing rim type floor drains may be installed in cystoscopic operating rooms.

4. Building sewers shall discharge into a community sewerage system. If a community sewerage [~~Where such a~~] system is not available, a facility providing sewage treatment shall be installed which conforms to [~~all~~] applicable local and state administrative regulations.

(7) Nonflammable medical gas systems. Installations shall be in accordance with the requirements of the National Fire Protection Association (NFPA) 56-A and 56-F. The number, type, and location of outlets shall be as follows:

STATION OUTLETS FOR OXYGEN AND VACUUM (SUCTION) OUTLETS		
Location	Oxygen	Vacuum
Patient room for adult medical, surgical, [~~and for~~] postpartum, or [~~care, and~~] pediatric care	A	A
Examination and treatment room in nursing unit	B	B
Patient room for intensive care	C	C
Nursery and pediatric nursery	A	A
General operating room	F	F
Cystoscopy and special procedure room	D	D
Recovery room	E	E
Delivery room	F	G
Labor room	A	A
Emergency treatment room	D	D
Autopsy room	–	D

A - One (1) outlet accessible to each bed. One (1) outlet may serve two (2) beds.

B - One (1) outlet. Portable equipment may be considered acceptable in lieu of fixed outlets.

C - Two (2) outlets for each bed or provide one (1) outlet with Y-fitting.

D - One (1) outlet.

E - One (1) outlet for each bed.

F - Two (2) outlets.

G - Three (3) outlets.

Section 32. Electrical Requirements. (1) General.

(a) [~~All material including~~] Equipment, conductors, controls, and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. [~~All~~] Materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards.

(b) [~~All~~] Electrical installations and systems shall be tested to show that the equipment is installed and operates as planned or specified. A written record of performance tests on special electrical systems and equipment shall be supplied to the owner. These [~~Such~~] tests shall show compliance with the governing codes and shall include conductive floors, isolated power centers, grounding continuity, and alarm systems.

(2) Switchboard and power panels. Circuit breakers or fusible switches that provide disconnecting means and overcurrent protection for conductors connected to switchboards and panel boards shall be enclosed or guarded to provide a dead front type of assembly. The main switchboard shall be located in a separate enclosure accessible only to authorized persons. The switchboard shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry ventilated space devoid of corrosive fumes or gases. Overload devices shall be suitable for operating properly in the ambient temperature conditions.

(3) Panel boards. Lighting and appliance panel boards shall be located on the same floor as the circuits they serve.

(4) Lighting.

(a) [~~All~~] Spaces occupied by people, machinery, or [~~and~~] equipment within buildings, and the approaches thereto, and parking lots shall have lighting.

(b) Patient [~~Patients'~~] bedrooms shall have general lighting and night lighting. A reading light shall be provided for each patient. Flexible light arms shall be mechanically operated to prevent the bulb from coming in contact with the bed linen. Patients' reading lights and other fixed lights not switched at the door shall have switch controls located convenient to the luminaire. A fixed type night light, mounted at approximately sixteen (16) inches above the floor, shall be provided in each patient room. [~~All~~] Switches for control of lighting in patient areas shall be of the quiet operating type.

(c) Operating and delivery rooms shall have general lighting in addition to local lighting provided by special lighting units at the surgical and obstetrical tables. Each fixed special lighting unit at the tables, except portable units, shall be connected to an independent circuit.

(d) Nursing unit corridors shall have general illumination with provisions for reduction of light levels at night. Refer to Table 3, Section 33(3) of this administrative regulation.

(5) Receptacles [~~(convenience outlets)~~].

(a) Anesthetizing locations. Each operating, delivery, and emergency room shall have at least three (3) receptacles. In locations where mobile x-ray is used, an additional outlet distinctively marked for x-ray use shall be provided.

(b) Bedroom. Each patient bedroom shall have duplex receptacles as follows:

1. One (1) on each side of the head of the bed;
2. One (1) for the television, if used; and
3. One (1) on another wall.

(c) Receptacles in pediatric and psychiatric units shall be of the safety type or shall be protected by five (5) milliampere ground fault interrupters.

(d)[~~(c)~~] Nurseries. Each bassinet shall have a minimum of one (1) duplex receptacle. [~~In special care nurseries~~] Additional receptacles shall be provided in special care nurseries, dependent on the types of equipment which will be used to provide medical care.

(e)[~~(d)~~] Corridors. Duplex receptacles for general use shall be installed approximately fifty (50) feet apart and within twenty-five (25) feet of ends of corridors. Receptacles in corridors of pediatric and psychiatric units shall be of the safety type or shall be protected by five (5) milliampere ground fault interrupters.

(6) Equipment installation in special areas.

(a) Installation in anesthetizing locations. [~~All~~] Electrical equipment, devices, receptacles, and wiring shall be in accordance with NFPA No. 56-A as adopted by the State Fire Marshal's Office for hospitals.

(b) Facilities where sources of radiation are used or stored shall conform to applicable state regulations for radiation protection. [~~X-ray and gamma ray installations. X-ray stationary installations and mobile equipment shall conform to the current Kentucky standards for radiographic and radioisotope equipment and use administrative regulations applicable to hospitals.~~]

(c) X-ray film illuminator. At least two (2) units shall be installed in each operating room, emergency treatment room, and [~~in the~~] x-ray viewing room for the radiology department.

(7) Nurses' calling system

(a) General.

1. In general patient areas, each room shall be served by at least one (1) calling station and each bed shall be provided with a call button.

2. Two (2) call buttons serving adjacent beds may be served by

one (1) calling station.

3. Calls shall register at an annunciator panel at the nurses' station and shall actuate a visible signal in the corridor at the patient room door, in the clean workroom, soiled workroom, the nourishment station, and the nurses' lounge of the nursing unit.

4. In multicorridor nursing units, additional visible signals shall be installed at corridor intersections.

5. In rooms containing two (2) or more calling stations, indicating lights shall be provided at each station.

6. Nurses' calling systems that [~~which~~] provide two (2) way voice communication shall be equipped with an indicating light at each calling station which lights and remains lighted as long as the voice circuit is operating.

(b) Patient [~~Patients~~] emergency.

1. A nurses' call emergency button shall be provided for patient [~~patients~~] use at each patient's toilet, bath, sitz bath, and shower room on the nursing unit floors.

2. Call [~~Such~~] buttons shall be usable by a [~~collapsed~~] patient lying on the floor, and the[~~,~~] inclusion of a pull cord shall [~~will~~] satisfy this requirement.

(c) Intensive care. In areas [~~such as intensive care~~] where patients are under constant surveillance, the nurses' calling system may be limited to a bedside station that will actuate a signal that can be readily seen by the nurse.

(d) Staff [~~Nurses~~] emergency. An emergency calling station, which may be used by staff [~~nurses~~] to summon assistance, shall be provided in each operating, delivery, recovery, emergency treatment and intensive care room, in nurseries, and in supervised nursing units for psychiatric [~~mental~~] patients.

(8) Fire alarm [~~alarms~~] and fire detection systems. The design and installation of fire alarm and fire detection [~~these~~] systems shall [~~must~~] be approved by the State Fire Marshal's Office.

(9) Emergency electrical.

(a) General. To provide electricity during interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to [~~certain~~] circuits for lighting and power as set forth in paragraph (d) below.

(b) Sources. The source of this emergency electric service shall be as follows:

1. An emergency generating set if[~~, when~~] the normal service is supplied by one (1) or more central station transmission lines; or[~~,~~]

2. An emergency generating set or a central station transmission line if[~~, when~~] the normal electric supply is generated on the premises.

(c) Emergency generating set.

1. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system.

2. Generator sets shall be self-sufficient insofar as possible, without dependency on public utilities that may be subject to cutoff or outages. [~~Exception:~~]

3. A system of prime movers which is [~~are~~] ordinarily used to operate other equipment and alternately used to operate the emergency generators shall [~~generator(s) will~~] be permitted provided that the:

a. Number and arrangement of the prime movers are such that when one (1) [~~of them~~] is out of service, [(]due to breakdown or for routine maintenance[)], the remaining prime movers [~~mover(s)~~] can operate the required emergency generators; [~~generator(s)~~] and [~~provided that the~~]

b. Connection time requirements as listed in paragraph (e) of this subsection are met.

4. The emergency generator set shall be of sufficient kilowatt capacity to supply the [~~all~~] lighting and power load demands of the emergency electrical system.

5. The power factor rating of the generator shall be not less than eighty (80) percent.

(d) Emergency electrical connections. Emergency electric service shall be provided to circuits as follows:

1. Lighting:[~~-~~]

a. Exits [~~Exitways~~] and [~~all~~] necessary ways of approach thereto, including exterior of exits, exit doorways, stairways, and corridors,[~~-~~]

b. Surgical, obstetrical, and emergency room operating lights,[~~-~~]

c. Nursery, laboratory, recovery room, intensive care areas, nursing station, medication preparation area, and labor rooms;[~~-~~]

d. Generator set location, switch-gear location, mechanical room, and boiler room;[~~-~~]

e. Elevator cabs; and[~~-~~]

f. Night light in patient rooms.

2. Equipment. Essential to life safety and for protection of important equipment or vital materials:

a. Nurses' calling system.

b. Paging or speaker systems, if intended for issuing instructions during emergency conditions. Alarms shall be required for medical gas systems.

c. Fire pump and jockey pump, if installed.

d. Pump for central suction system.

e. Sewerage or sump lift pump, if installed.

f. Blood bank refrigerator.

g. Selected receptacles in:

(i) Infant nurseries;[~~-~~]

(ii) Medicine dispensing areas,[~~-~~]

(iii) Cardiac catheterization laboratories;[~~-~~]

(iv) Angiographic laboratories;[~~-~~]

(v) Labor, operating, delivery, and recovery rooms;[~~-~~]

(vi) Dialysis units;[~~-~~]

(vii) Intensive care units;[~~-~~]

(viii) Emergency treatment rooms;[~~-~~]

(ix) Basic laboratory functions;[~~-~~] and

(x) Nurses' stations.

h. Duplex receptacles in patient corridors[~~-~~] and at least one (1) duplex receptacle located on the patient headwall in each patient room.

i. Elevator service that will reach every patient floor. Manual throw over facilities shall be provided to allow temporary operation of any elevator for the release of persons who may be trapped between floors.

j. Ventilation of operating and delivery rooms.

k. Equipment necessary for maintaining telephone service.

3. Heating. Equipment for heating operating, delivery, labor, recovery, intensive care, and general patient rooms,[~~-~~] except that service for heating of general patient rooms will not be required under either of the following conditions:

a. The design temperature is higher than twenty (20) degrees Fahrenheit, based on the Median of Extremes as shown in the current edition of the "ASHRAE Handbook- [~~of~~] Fundamentals".

b. The hospital is supplied by two (2) or more electrical services supplied from separate generating sources, or a utility distribution network having multiple power input sources and arranged to provide mechanical and electrical separation, so that a fault between the hospital and generating sources will not likely cause an interruption of the hospital service feeders.

(e) Details. The emergency electrical system shall be so controlled that, after interruption of the normal electric power supply, the generator shall be [~~is~~] brought to full voltage and frequency and shall [~~it must~~] be connected within ten (10) seconds through one (1) or more primary automatic transfer switches to [~~all~~] emergency lighting systems; alarms systems; blood banks; nurses' calling systems, equipment necessary for maintaining telephone service; pump for central suction system; and task illumination and receptacles in operating, delivery, emergency, intensive care nursing areas, nurseries, patient rooms, and patient corridors. [~~All~~] Other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switching or shall be subsequently connected through other automatic or manual transfer switching. Receptacles connected to the emergency system shall be distinctively marked for identification. Storage-battery-powered lights, provided to augment the emergency lighting or for continuity of lighting during the interim of transfer switching immediately following an interruption of the normal service supply, shall not be used as a substitute for the requirement of a generator. If [~~Where~~] stored fuel is required for emergency generator operation, the storage capacity shall be sufficient to supply for at least [~~not less than~~] twenty-four (24) hours of continuous operation.

Section 33. (1) Table 1 - Sound Transmission Limitations in General Hospitals. ~~[Table 2 - Pressure Relationships and Ventilation of Certain Hospital Areas. Table 3 - Lighting Levels for Hospitals.]~~

TABLE 1.
Sound Transmission Limitations in General Hospitals.

Location	Airborne Sound Transmission Class (STC) a*	Impact Insulation Class (IIC) b*	
	Partitions	Floors	Floors
Patient[~~Patients~~] room to patient [~~patients~~] room	45	45	45
Corridor to patient [~~patients~~] room	40	45	45 c*
Public space to patient [~~patients~~] room d*	50	50	50 c*
Service areas to patient room e*	55	55	55 c*

a* - Sound transmission class (STC) shall be determined by tests in accordance with the methods set forth in ASTM International Standard E-90 and ASTM Standard E-413.

b* - Impact insulation class (IIC) shall be determined in accordance with criteria set forth in U S Department of Housing and Urban Development (HUD) FT/TS-24, "A Guide to Airborne, Impact and Structure Borne Noise - Control in Multifamily Dwellings."

c* - Impact noise limitation applicable only when corridor, public space, or service area is over a patient [~~patients~~] room.

d* - Public space includes lobbies, dining rooms, recreation rooms, treatment rooms, and similar spaces.

e* - Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patient [~~patients~~] rooms, offices, nurses' stations and similar occupied spaces shall be effectively isolated relating to noise transmission.

Note: The requirements set forth in this table assume installation methods which will not appreciably reduce the efficiency of the assembly as tested.

(2) Table 2 - Pressure Relationships and Ventilation of Certain Hospital Areas.

TABLE 2.
PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN HOSPITAL AREAS.

Area Designation	Pressure Relationship to Adjacent Areas	All Supply Air From Outdoors	Minimum Air Changes Outdoor Air per Hour	Minimum Total Air Changes Per Hour	All Air Exhausted Directly to Outdoors	Recirculated Within Room Units
Operating room	P	--	5	12	--	No
Emergency operating room	P	--	5	12	--	No
Delivery room	P	--	5	12	--	No
Nursery	P	--	5	12	--	No
Recovery	O	--	2	6	--	No
Intensive Care	P	--	2	6	--	No
Patient room	O	--	1	4	--	--
Patient corridor	O	--	1	4	--	No
Isolation room	O	--	2	8	Yes	No
Isolation anteroom	N	--	2	8	Yes	No
Treatment room	O	--	2	8	--	No
X-ray, fluoroscopy room	N	--	2	8	yes	No
X-ray, treatment room	O	--	2	8	--	No
Physical therapy & hydrotherapy	N	--	2	8	Yes	No
Soiled workroom	N	--	2	8	Yes	No
Clean workroom	P	--	1	8	--	No
Autopsy and darkroom	N	--	3	12	Yes	No
Toilet room	N	--	--	10	Yes	No
Bedpan washing	N	--	2 room	8	Yes	No
Bathroom	N	--	2	10	Yes	No
Janitor's closet	N	--	--	10	Yes	No
Sterilizer equipment room	N	--	--	10	Yes	No
Linen and trash chute rooms	N	--	--	10	Yes	No
Laboratory, general	O	--	2	8	--	No
Laboratory, media transfer	P	--	2	8	--	No
Food preparation	O	--	2 centers	10	--	No
Dishwashing room	N	--	2	10	Yes	No
Dietary dry storage	O	--	--	2	--	No
Laundry, general	O	--	2	10	--	No
Soiled linen sorting & storage	N	--	2	10	Yes	No
Clean linen storage	P	--	1	4	--	No
Central medical & surgical supply:						
Soiled or decontamination room	N	--	2	10	Yes	No
Clean workroom & supply storage	P	--	2	8	--	No

(a) P = Positive
(b) N = Negative
(c) O = Equal
(d) -- = Optional

(3) Table 3 - Lighting Levels for Hospitals.

TABLE 3. LIGHTING LEVELS FOR HOSPITALS	
Area	Foot-candles*
Administrative and lobby areas, day	100
Administrative and lobby areas, night	20
Chapel or quiet area	30
Corridors and interior ramps	30
Corridor night lighting	10
Dining area and kitchen	50
Doorways	10
Examination and treatment room	
General	50
Examining table	100
Exit stairways and landings	30
Janitor's closet	20
Nurses' station, general, day	50
Nurses' station, general, night	20
Nurses' desk or counter, for charts & records	150
Nurses' medicine area, preparations & storage	100
Occupational therapy	30
Patient care unit or room, general	10
Patient care room, reading	50
Patient care room, night light (variable)	.5 to 1 5
Physical therapy	30
Stairways other than exits	50
Toilet and bathing facilities	30
Clean workroom	100
Soiled workroom	100
Nurses' lounge	30
Laundry, general	50

*Minimum on task at anytime.

Section 34. New Construction and Renovation Facility Requirements (1) Unless otherwise required by this section of this administrative regulation, effective June 1, 2008, hospital plans submitted for approval to the licensing agency shall be compliant with the standards established in chapters 1.6 and 2 1 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(2) Unless otherwise required by this section of this administrative regulation, a hospital shall not be required to comply with requirements established in other chapters of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition, as referenced in Chapter 2.1.

(3) Hospital plans submitted for approval to the licensing agency after the effective date of this regulation and prior to June 1, 2008 may meet either the requirements established in this section or in sections 6-33 of this administrative regulation

(4) An endoscopy suite shall comply with requirements established in Chapter 3 9, paragraphs 2 3-3.5 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition. A hospital shall comply with requirements established in other chapters of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition, as referenced in Chapter 3 9, paragraphs 2.3-3.5 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(5) A psychiatric nursing unit patient room shall comply with requirements established in Chapter 2 3, paragraphs 2 1-2.1.1.6 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition, as referenced in Chapter 2.1, paragraph 3 8 2 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(6) Psychiatric nursing unit support areas shall comply with requirements established in Chapter 2 3, paragraphs 2.6.1-2 9.4 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(7) A seclusion treatment room in a psychiatric nursing unit shall comply with requirements established in Chapter 2 3, paragraphs 2.2.1-2.2.1.5 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition, as referenced in Chapter 2.1, paragraph 3 8 3 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(8) A child psychiatric unit shall comply with requirements established in Chapter 2 3, paragraphs 2 3-2 3.3 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(9) A geriatric, Alzheimer's, or other dementia unit shall comply with requirements established in Chapter 2.3, paragraphs 2.4-2 4 2 3 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(10) Outpatient surgery and post-anesthetic care provided in the surgical suite of the hospital, in a separate unit of the hospital, or in a separate facility licensed as part of the hospital, shall comply with the requirements established in Chapter 3.7, paragraphs 1.1-2.3.1 and paragraphs 2 3 1.2-6 4 1 of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition. Class A operating rooms shall not be allowed.

(11) Outpatient services licensed as part of the hospital shall comply with requirements established in this administrative regulation and shall be provided in the main hospital building or in buildings on the premises or contiguous to the premises of the hospital.

(12) A patient room shall have a window with a sill that is not more than three (3) feet above the floor and not less in area than eight (8) percent of the total floor area of the room.

(13) Transportable or relocatable units utilized by the applicant or licensee shall:

(a) Comply with requirements established in this section; and

(b) Be accessible to the facility by a covered walkway that:

1. Ensures a patient is protected from the outside elements; and

2. Provides access to a patient in a wheelchair or on a stretcher.

(14) Prior to completion of construction or renovation, the licensee or applicant shall obtain from the contractor certification in writing that mechanical and electrical systems have been tested and that the installation and performance of these systems conform with the final plans and specifications.

Section 35 Incorporation by Reference. (1) The following material is incorporated by reference: Chapter 1.2, paragraphs 2.1-2.3 2; Chapter 1.5, paragraphs 1 1-2 3.3.2; Chapter 1.6; Chapter 2.1; Chapter 2 3, paragraphs 2 1-2 1.1 6; Chapter 2.3, paragraphs 2.2.1-2 2.1.5; Chapter 2.3, paragraphs 2.3-2.3.3; Chapter 2 3, paragraphs 2 4-2.4 2 3; Chapter 2 3, paragraphs 2 6 1-2.9 4; Chapter 3 7, paragraphs 1.1-2 3 1 and 2.3.1.2-6.4.1; and Chapter 3.9, paragraphs 2 3-3 5, of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(2) This material may be inspected, copied, or obtained subject to applicable copyright law, at the Office of Inspector General, 275 East Main Street, Fifth Floor East, Frankfort, Kentucky 40621, Monday through Friday, 8 00 a m to 4 30 p m.

STEVEN D. DAVIS, Inspector General
MARK D BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, Phone: 502-564-7905, Fax: 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Steven D. Davis

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides licensure requirements for plan submission, structural specifications, plant requirements, and maintenance of hospitals.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish licensure requirements for the structural specifications, plant requirements, and maintenance of hospitals.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 216B.042 requires that the Kentucky Cabinet for Health and Family Services regulate health facilities and health services. This administrative regulation establishes the requirements for plan submission, structural specifications, and plant requirements for new construction, renovation, and maintenance of hospital facilities.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the licensure requirements for plan submission, structural specifications, plant requirements, and maintenance of hospitals.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment to the administrative regulation will bring Kentucky law into conformity with industry standards regarding construction and renovation of hospitals.

(b) The necessity of the amendment to this administrative regulation: This amendment to the administrative regulation has been requested by the hospital provider community in order to update hospital facility specification requirements. This administrative regulation was last amended in January of 1990 and is no longer consistent with accepted industry standards.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 216B.042 mandates that the Kentucky Cabinet for Health and Family Services license, regulate, and inspect health care facilities and health services

(d) How the amendment will assist in the effective administration of the statutes: This amendment to the administrative regulation will bring Kentucky's current construction and renovation requirements into line with accepted architectural standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: The 116 hospitals currently licensed in the Commonwealth will be affected by this regulation when undergoing significant renovation or new construction.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: New construction or renovation plans submitted by hospital licensees or applicants after June 1, 2008 will be required to meet select sections of the "Guidelines for Design and Construction of Hospital and Health Care Facilities", 2006 edition.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to comply with the amendment to the administrative regulation as most hospitals currently follow the "Guidelines for Design and Construction of Hospital and Health Care Facilities".

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Confusion as to requirements for hospital construction and renovation will be eliminated as Kentucky standards will conform to national industry standards.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional cost to implement this administrative regulation.

(b) On a continuing basis: There will be no additional cost to the agency on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for the implementation and enforcement of this amendment to the administrative regulation will be from state general fund dollars and fees generated for review of plans and specifications for construction or renovation of hospitals pursuant to 902 KAR 20.008 ($.05 per sq. ft. or $100 minimum).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this administrative regulation amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applicable as compliance with this amendment applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Cabinet for Health and Family Services will be required to implement the standards established in this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.042, KRS 216B.105.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenue generated for state or local government for the first year that this amended administrative regulation is in effect.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenue generated for state or local government for subsequent years after this amended administrative regulation becomes effective.

(c) How much will it cost to administer this program for the first year? There will be no additional cost to administer this program for the first year.

(d) How much will it cost to administer this program for subsequent years? There will be no additional cost to administer this program during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Public Health
Division of Public Health Protection and Safety
(Amendment)

902 KAR 45:120. Inspection fees; permit fees; hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies.

RELATES TO: KRS 211.180, 219.021, 219.041, 219.340, 219.350, 219.390, 2000 Ky. Acts ch. 549, part I.A.41

STATUTORY AUTHORITY: KRS 194A.050, 211.180(2), 219.041(1), 219.340, 2000 Ky. Acts ch. 549, part I.A.41

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050, 219.041, and 2000 Ky Acts ch. 549, part I.A.41 authorize the Secretary for the Cabinet for Health and Family Services to provide by administrative regulation a schedule of reasonable fees to be paid by hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies to cover the cost of inspection and sampling activities carried out by the Cabinet for Health and Family Services. This administrative regulation establishes the permit and inspection fees to be charged to hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies.

Section 1. Fees for Inspections. An annual fee shall be assessed for an inspection conducted by the cabinet or its representative of a hotel or youth camp, or for sampling of a private water supply according to the following schedule:

(1) A hotel with:
(a) One (1) to twenty-five (25) rooms - fifty-three (53) dollars;
(b) Twenty-six (26) to fifty (50) rooms - ninety (90) dollars;
(c) Fifty-one (51) to 100 rooms - ninety-five (95) dollars;
(d) 101 rooms to 200 rooms - $100;
(e) 201 rooms to 300 rooms - $110;
(f) 301 to 400 rooms - $120;
(g) 401 or more rooms - $130,
(2) Youth camps:
(a) Day youth camp - forty (40) dollars;
(b) Primitive youth camp - forty (40) dollars;
(c) Residential youth camp with:
1. One (1) to twenty (20) beds - forty (40) dollars;
2. Twenty-one (21) to fifty (50) beds - fifty (50) dollars;
3. Fifty-one (51) or more beds - sixty (60) dollars; and
(3) Sampling of private water supply - fifteen (15) dollars.

Section 2. Permit Fees for Hotels and Mobile Home Parks and Recreational Vehicle Parks. (1) An application for an annual permit to operate a hotel shall be accompanied by fee of sixty (60) dollars.

(2) A mobile home park or recreational vehicle park with:
(a) One (1) to ten (10) spaces - fifty (50) dollars [~~$107~~];
(b) Eleven (11) to fifty (50) spaces - $150;
(c) Fifty-one (51) to 100 spaces - $160;
(d) 101 to 200 spaces - $170,
(e) 201 or more spaces - $180.

(3) An application for a permit to construct or alter a mobile home park or recreational vehicle park shall be accompanied by a fee of forty-seven (47) dollars.

Section 3. Payment of Fees. (1) Fees shall be paid to the local health department having jurisdiction. Fees received by local health departments shall be deposited in the Kentucky State Treasury. Inspection fees shall be submitted with the application for a permit to operate.

Section 4. Exemptions. (1) A facility operated by the Cabinet for Health and Family Services or the Justice Cabinet shall be exempt from the payment of inspection fees.

(2) If a local health department samples a private water supply as part of an investigation of illness, the sample shall be taken without charging a fee.

WILLIAM D. HACKER, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 am in the Health Service Auditorium, Health Service Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Ken Spach

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the permit and inspection fees to be charged to hotels, mobile home parks, recreational vehicle parks, youth camps, and private water supplies.

(b) The necessity of this administrative regulation: This administrative regulation establishes a schedule of fees to be paid by hotels, mobile home parks, recreational vehicle parks, youth camps, and private water supplies to cover the cost of inspection and sampling activities carried out by the Cabinet for Health and Family Services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statute by establishing the permit and inspection fee schedule for hotels, mobile home parks, recreational vehicle parks, youth camps, and private water supplies.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the inspection fee and permit fees for hotels, mobile home parks, recreational vehicle parks, youth camps and private water supplies.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment to the regulation reduces the permit fee for mobile home and recreational vehicle parks that are 10 spaces or less from $107 to fifty (50) dollars.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation reflects the legislative requirements mandated in House Bill 611 from the 2006 session, which established the revised fee schedule for mobile home parks.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment complies with the intent and provision of the authorizing statue and legislation that modified the fee schedule for mobile home and recreational vehicle parks.

(d) How the amendment will assist in the effective administration of the statutes: This amendment establishes the inspection and permit fees for hotels, mobile home parks, recreational vehicle parks, youth camps, and private water supplies.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are 1,265 active mobile home and recreational vehicle parks, 120 county health departments, and the Department for Public Health that will be affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administra-

tive regulation, if new, or by the change, if it is an amendment including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Parks with fewer than ten (10) spaces will pay fifty (50) dollars for annual permit fees. Parks with eleven (11) or more spaces will see no change in the annual permit fee.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): In complying with this administrative regulation it will cost each park with 10 spaces or less fifty (50) dollars; eleven (11) to fifty (50) spaces - $150; fifty-one (51) to 100 spaces - $160; 101 to 200 spaces - $170; 201 or more spaces - $180 as outlined by House Bill 611.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): For parks with less than ten (10) spaces, there will be an annual savings of fifty-seven (57) dollars. Parks with eleven (11) or more spaces will see no change in the annual permit fee.

(5) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: There is no additional cost to implement this administrative regulation. As a result of the reduced fees mandated by HB 611, the agency will incur an initial revenue loss of approximately $100,000. This reduction in agency revenue will be addressed through operational efficiencies

(b) On a continuing basis: There are no additional costs to implement this administrative regulation. As a result of the reduced fees mandated by HB 611, the agency will incur an annual revenue loss of approximately $100,000. This reduction in agency revenue will be addressed through operational efficiencies

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Inspection and permit fees are the primary source of funding to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation if new or by the change if it is an amendment. There will be no cost to implement this regulation. The reduction in agency revenue will be addressed through operational efficiencies.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There is no increase in fees as a result of the regulation. This amendment reduces the fee for mobile home parks and recreational vehicle parks with less than 10 spaces from $107 to fifty (50) dollars and maintains the current fee structure for parks with 11 or more spaces.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The agencies impacted by this regulation will be the 120 county health departments and the Department for Public Health Environmental Management Branch.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 902 KAR 45:120, KRS 194A.050, 211.180(2), 219.021, 219 041(1), 219.340, 219.350, 219.390, 2000 Ky. Acts ch. 549, part I.A.41.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This regulation will generate $63,250 in revenue for the Department for Public Health in the first year. As a result of the reduced fees mandated by HB 611 from the 2006 session, the agency will incur an initial revenue loss of approximately $100,000. This reduction in agency revenue will be addressed though operational efficiencies.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This regulation will generate $63,250 in revenue for the Department for Public Health in subsequent years. As a result of the reduced fees mandated by HB 611 from the 2006 session, the agency will incur a revenue loss of approximately $100,000 in subsequent years. This reduction in agency revenue will be addressed though operational efficiencies.

(c) How much will it cost to administer this program for the first year? It will cost the Department of Public Health Environmental Management Branch $63,250 in the first year to administer this program.

(d) How much will it cost to administer this program for subsequent years? It will cost the Department of Public Health Environmental Management Branch $63,250 to administer this program in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): n/a
Expenditures (+/-): n/a
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amendment)

907 KAR 1:015. Payments for outpatient hospital [~~outpatient~~] services.

RELATES TO: KRS 205.520, 42 C.F.R. 440.2, 440.20(a)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.637, 42 U.S.C. 1396a, 1396b, 1396d[~~, EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has the responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for [~~hospital~~] outpatient hospital services.

Section 1. Definitions. (1) "Critical access hospital" or "CAH" means a hospital meeting the licensure requirements established in 906 KAR 1:110.

(2) "Current procedural terminology code" or "CPT code" means a code used for the reporting of medical services or procedures using the current procedural terminology developed by the American Medical Association.

(3) "Department" means the Department for Medicaid Services or its designee.

(4) "Healthcare common procedure coding system" or "HCPCS" means a collection of codes acknowledged by the Centers for Medicare and Medicaid Services that represent procedures.

(5) "Level 1 service" means a service [~~services~~] billed using CPT code 99281.

(6) "Level 2 service" means a service [~~services~~] billed using CPT code [~~codes~~] 99282 or 99283.

(7) "Level 3 service" means a service [~~services~~] billed using CPT code [~~codes~~] 99284, 99285, 99291, or 99292.

(8) "Outpatient cost-to-charge ratio" means the ratio determined by dividing the costs reported on Supplemental Worksheet E-3, Part III, Page 12 column 3, line 27 of the cost report by the charges reported on column 3, line 20 of the same schedule.

(9) "Revenue code" means a provider-assigned revenue code for each cost center for which a separate charge is billed.

(10) "Triage" means a medical screening and assessment billed using revenue code 451.

Section 2. Outpatient Hospital Service Reimbursement [~~Services~~]. (1) Except for a critical access hospital, [~~for services provided on or after August 4, 2003,~~] the Department for Medicaid Services shall reimburse a participating in-state hospital for an outpatient service [~~outpatient services~~] in accordance with this subsection.

(a) For the following procedures, the rates shall be as follows:

1. Cardiac catheterization lab:
a. Unilateral - $1,478; or
b. Bilateral - $1,770;
2. Computed tomography scan - $479;
3. Lithotripsy - $3,737;
4. Magnetic resonance imaging - $593;
5. Observation room - $458; and
6. Ultrasound - $177.

(b) If multiple services listed in paragraph (a) of this subsection are provided, each service shall receive the corresponding rate established in paragraph (a) of this subsection.

(c) The department shall utilize the [~~1996~~] Medicare ambulatory surgical center groups as published in the Federal Register on October 1st of each year to reimburse for an outpatient surgery. The following chart establishes the reimbursement rate for each corresponding surgical group:

Ambulatory Surgical Center Group	Reimbursement Rate
Group 1	$397
Group 2	$534
Group 3	$610
Group 4	$753
Group 5	$858
Group 6	$1,016
Group 7	$1,191
Group 8	$1,191

(d) Reimbursement for an outpatient surgery which does not have a surgical group rate shall be at a facility-specific outpatient cost-to-charge ratio.

(e) For multiple surgeries provided to the same recipient on the same day, only the surgery with the highest reimbursement rate established in paragraph (c) of this subsection, shall be paid.

(f) Except for the services listed in paragraph (g) of this subsection, all other services provided to the same recipient on the same day shall be reimbursed in accordance with paragraphs (a), (b), (c), (d), and (e) of this subsection.

(g) The following shall be reimbursed on an interim basis at a facility-specific outpatient cost-to-charge ratio for the following revenue codes:

Service	Revenue Code
Pharmacy	250, 251, 252, 254, 255, 258, 260, 261, 634, 635, 636
X-ray	320, 321, 322, 323, 324, 342, 400, 403, 920
Supplies	270, 271, 272, 274, 275, 621, 622, 623
EKG/ECG and Therapeutic Services	410, 412, 413, 420, 421, 422, 423, 424, 440, 441, 442, 443, 460, 470, 471, 472, 480, 482, 510, 512, 516, 517, 730, 731, 732, 740, 901, 922, 940, 942, 943
Room and Miscellaneous	280, 290, 370, 371, 372, 374, 700, 710, 750, 761, 890, 891, 892, 893, 921
Dialysis	821, 831, 841
Chemotherapy	330, 331, 332, 333, 334, 335

(h) Except as established in paragraph (i) of this subsection, a service [~~Services~~] reimbursed in accordance with paragraph (g) of this subsection shall be settled to cost at year end.

(i) If a service or supply listed in paragraph (g) of this subsection appears on a claim with a line item reimbursed via a flat rate, reimbursement for the supply or services:

1. Shall not be cost settled; and
2. Shall be included in the flat rate.

(2) Except for pharmacy services billed using revenue codes 250, 251, 252, 254, 255, 258, 260, 261, 634, 634, or 636, medical or surgical supplies billed using revenue codes 270-275, and triage billed using revenue code 451, a hospital shall include all applicable CPT and HCPCS codes on a claim.

(3) Except for services listed in subsection (1)(g) of this section, [~~beginning August 4, 2003,~~] an out-of-state hospital providing outpatient services shall be reimbursed in accordance with subsection (1) of this section.

(4) Reimbursement for an outpatient hospital service provided by an out-of-state hospital shall be as follows:

(a) Reimbursement for a service or supply listed in subsection (1)(g) of this section appearing on a claim with a line item reimbursed via a flat rate shall be included in the flat rate;

(b) Except for a service or supply appearing on a claim with a line item reimbursed via a flat rate, a service [~~Services~~] listed in subsection (1)(g) of this section provided by an out-of-state hospital shall be reimbursed by multiplying the average outpatient cost-to-charge ratio of in-state hospitals, excluding critical access hospitals, by billed charges.

(5)(a) An outpatient hospital laboratory service shall be reimbursed at the Medicare-established technical component rate in accordance with 907 KAR 1:029.

(b) An outpatient hospital laboratory service with no established Medicare rate shall be reimbursed by multiplying a facility-specific outpatient cost-to-charge ratio by billed charges.

(c) There shall be no cost setting.

(6) A critical access hospital shall be reimbursed on an interim basis:

(a) By multiplying charges by the lesser of:

1. The Medicare cost-to-charge ratio issued by the Medicare fiscal intermediary in effect at the time; or
2. The Medicaid outpatient cost-to-charge ratio;

(b) For a laboratory service in accordance with the Medicare fee schedule; and

(c) With a settlement to cost at the end of the year.

(7) A hospital providing outpatient services shall be required to submit a cost report within five (5) months after a hospital's fiscal year end.

(8) Failure to provide a cost report within the timeframe established in subsection (7) of this section shall result in a suspension of future payment until the cost report is received by the department.

(9) If a cost report indicates payment is due, a provider shall remit payment in full or a request for a payment plan with the cost report.

(10) If a cost report indicates a payment is due and a hospital fails to remit a payment or request for a payment plan, the department shall suspend future payment to the hospital.

(11) An estimated payment shall not be considered payment-in-full until a final determination of cost has been made by the department.

(12) If it is determined that an additional payment is due after a final determination of cost has been made by the department, the

additional payment shall be due sixty (60) days after notification.

(13) If a hospital fails to submit an additional payment in accordance with subsection (12) of this section, the department shall suspend future payment to the hospital.

Section 3. Supplemental Payments. (1) In addition to a payment received in accordance with Section 2 of this administrative regulation, a nonstate government hospital, as defined in 42 C.F.R. 447.321(2), whose county has entered into an intergovernmental agreement with the Commonwealth shall receive a quarterly supplemental payment in an amount equal to the difference between the payments made in accordance with Sections 2 and 4 of this administrative regulation and the maximum amount allowable under 42 C.F.R. 447.321.

(2) A payment made under this section shall:

(a) Not be subject to the cost-settlement provisions established in Section 2 of this administrative regulation; and

(b) Apply to a service provided on or after April 2, 2001.

Section 4. In-state and Out-of-state Emergency Room Service Reimbursement [~~Services~~]. (1) Services provided in an emergency room shall be reimbursed as follows:

(a) The triage service reimbursement rate shall be twenty (20) dollars;

(b) The level 1 service reimbursement rate shall be eighty-two (82) dollars;

(c) The level 2 service reimbursement rate shall be $164; and

(d) The level 3 service reimbursement rate shall be $264.

(2) In addition to the rate paid for services listed in subsection (1) of this section, the following shall be paid at the following rates:

(a) Cardiac catheterization lab:

1. Unilateral - $1,478; or

2. Bilateral - $1,770;

(b) Computed tomography scan - $479;

(c) Lithotripsy - $3,737;

(d) Magnetic resonance imaging - $593;

(e) Observation room - $458; and

(f) Ultrasound - $177.

(3) If multiple services listed in subsection (2) of this section are provided, each service shall receive the corresponding rate established in subsection (2) of this section.

(4) Except as listed in subsection (5) of this section, a separate payment shall not be made for the services or supplies listed in Section 2(1)(g) of this administrative regulation.

(5) A thrombolytic agent shall be reimbursed at the hospital's acquisition cost.

(6) A service provided in an emergency room of a critical access hospital shall be reimbursed in accordance with Section 2(6) of this administrative regulation.

Section 5. Appeals. A hospital may appeal a decision as permitted by 907 KAR 1:671.

Section 6. Cost Report Requirements. (1) An in-state hospital participating in the Medicaid Program shall submit to the department a copy of the Medicare cost report it submits to CMS, the Supplemental Medicaid Schedule KMAP-1, and the Supplemental Medicaid Schedule KMAP-4 as follows:

(a) A cost report shall be submitted:

1. For the fiscal year used by the hospital, and

2. Within five (5) months after the close of the hospital's fiscal year; and

(b) Except as follows, the department shall not grant a cost report submittal extension:

1. If an extension has been granted by Medicare, the cost report shall be submitted simultaneously with the submittal of the Medicare cost report; or

2. If a catastrophic circumstance exists, for example flood, fire, or other equivalent occurrence, the department shall grant a thirty (30) day extension.

(2) If a cost report submittal date lapses and no extension has been granted, the department shall immediately suspend all payment to the hospital until a complete cost report is received.

(3) The cost report submitted by a hospital shall be subject to audit and review.

(4) An in-state hospital shall submit a final Medicare-audited cost report upon completion by the Medicare intermediary to the department.

Section 7. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Supplemental Worksheet E-3, Part III, Page 12", November 1992 edition";

(b) "Supplemental Medicaid Schedule KMAP-1", January 2007 edition; and

(c) "Supplemental Medicaid Schedule KMAP-4", January 2007 edition [~~is incorporated by reference~~].

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p m.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 2, 2007

FILED WITH LRC: July 12, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary in order to reimburse hospitals for the provision of outpatient services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes of this administrative regulation grant the Department for Medicaid Services (DMS) the authority to reimburse hospitals for the provision of outpatient services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement methodology for outpatient hospital services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment clarifies that reimbursement for the services and supplies identified in Section 2(1)(g) of this administrative regulation shall be included in a flat rate (not cost settled) if the service or supply appears on a claim with a line item that is reimbursed via a flat rate. This amendment further establishes cost reporting requirements for in-state hospitals.

(b) The necessity of the amendment to this administrative

regulation: This amendment is necessary to streamline the reimbursement process for services and supplies identified in Section 2(1)(g) of this administrative regulation, thereby helping to maintain the viability of the Medicaid Program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by establishing outpatient procedures reimbursed via a flat rate rather than via a cost basis.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This amendment assists in the effective administration of the authorizing statutes by establishing outpatient procedures reimbursed via a flat rate rather than via a cost basis.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All hospitals providing outpatient services are affected by this amendment.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Regulated entities will not have to take any action to comply with the amendment as the amendment alters outpatient hospital reimbursement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Regulated entities will not have to take any action to comply with the amendment as the amendment alters outpatient hospital reimbursement.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: While implementation of the amendment to this administrative regulation could improve cash flow, the fiscal impact is indeterminable.

(b) On a continuing basis: While implementation of the amendment to this administrative regulation could improve cash flow, the fiscal impact is indeterminable.

(c) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in funds or funding will be necessary to implement this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees, nor does it directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All hospitals providing outpatient services are affected by this amendment.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 C.F.R. 440.20, 42 C.F.R. 447.321

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? While implementation of the amendment to this administrative regulation could improve cash flow, the fiscal impact is indeterminable.

(d) How much will it cost to administer this program for subsequent years? While implementation of the amendment to this administrative regulation could improve cash flow, the fiscal impact is indeterminable.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Amendment)

907 KAR 1:145. Supports for community living services for an individual with mental retardation or a developmental disability.

RELATES TO: KRS 205.520, 205.5605, 205.5606, 205 5607, 42 C.F.R. 441 Subpart G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A 030(2), 194A.050(1), 205.520(3), 205 6317

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205 5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community based services waivers. This administrative regulation establishes the coverage provisions relating to home and community-based services provided to an individual with mental retardation or a developmental disability as an alternative to placement in an intermediate care facility for an individual with mental retardation or a developmental disability, including a consumer directed option pursuant to KRS 205 5606.

Section 1. Definitions. (1) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351 [~~MAP-351B~~];

(b) Submitted to the department:

1. For a level of care determination; and

2. [~~(c) Conducted prior to an individual's initial admission to the waiver and at least~~] Annually thereafter.

(2) "Behavior intervention committee" or "BIC" means a group

of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an SCL recipient.

(3) "Behavior support specialist" means an individual who has a master's degree with formal graduate course work in a behavioral science and at least one (1) year of experience in behavioral programming

(4) "Blended services" means a nonduplicative combination of SCL waiver services identified in Section 4 of this administrative regulation and CDO services identified in Section 5 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(5) "Budget allowance" is defined by KRS 205.5605(1).

(6) "Certified psychologist with autonomous functioning" or "licensed psychological practitioner" means a person licensed pursuant to KRS 319.053 or 319.056.

(7) "Consumer" is defined by KRS 205.5605(2).

(8) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waivers that allow recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(9) "Covered services and supports" is defined by KRS 205.5605(3).

(10) [~~(5)~~] "DCBS" means the Department for Community Based Services.

(11) [~~(6)~~] "Department" means the Department for Medicaid Services or its designee.

(12) [~~(7)~~] "Developmental disability" means a disability that:

(a) Is manifested prior to the age of twenty-two (22),

(b) Constitutes a substantial disability to the affected individual; and

(c) Is attributable to mental retardation or related conditions that:

1. Result in impairment of general intellectual functioning and adaptive behavior similar to that of a person with mental retardation; and

2. Are a direct result of, or are influenced by, the person's substantial cognitive deficits.

(13) [~~(8)~~] "DMHMR" means the Department for Mental Health and Mental Retardation Services.

(14) [~~(9)~~] "DMR" means the Division of Mental Retardation in the Department for Mental Health and Mental Retardation Services.

(15) [~~(10)~~] "Electronic signature" is defined in KRS 369.102.

(16) [~~(11)~~] "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, which includes:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 2 of this administrative regulation has not been completed but is expected to be completed in two (2) weeks or less;

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period; or

(e) The individual is residing in a facility and is actively participating in a transition plan to community based services, the length of which is greater than sixty (60) days but less than one (1) year.

(17) [~~(12)~~] "Human rights committee" means a group of individuals established to protect the rights and welfare of an SCL recipient.

(18) [~~(13)~~] "ICF-MR-DD" means an intermediate care facility for an individual with mental retardation or a developmental disability.

(19) ~~[(14) "Individual support plan" or "ISP" means a written individualized plan developed by an SCL recipient, or an SCL recipient's legal representative, support coordinator, or others designated by an SCL recipient.~~

~~(15)~~] "Level of care determination" means a determination by the department that an individual meets low-intensity or high-intensity patient status criteria in accordance with 907 KAR 1:022.

(20) [~~(16)~~] "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2) [~~means a person licensed pursuant to KRS 335.300 to 335.399~~].

(21) [~~(17)~~] "Licensed professional clinical counselor" or "LPCC" is defined by KRS 335.500(3) [~~means a person licensed pursuant to KRS 335.500 to 335.599~~].

(22) [~~(18)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3.130.

(23) [~~(19)~~] "Mental retardation" means that a person has:

(a) Significantly sub-average intellectual functioning;

(b) An intelligence quotient of approximately seventy (70) or below;

(c) Concurrent deficits or impairments in present adaptive functioning in at least two (2) of the following areas:

1. Communication;
2. Self-care;
3. Home living;
4. Social or interpersonal skills;
5. Use of community resources;
6. Self-direction;
7. Functional academic skills;
8. Work;
9. Leisure; or
10. Health, and safety; and

(d) Had an onset before eighteen (18) years of age.

(24) [~~(20)~~] "Occupational therapist" means an individual who is licensed as defined in accordance with KRS 319A.010.

(25) "Occupational therapy assistant" is defined in KRS 319A.010(4).

(26) "Patient liability" means the financial amount an individual is required to contribute towards the cost of care in order to maintain Medicaid eligibility.

(27) [~~(21)~~] "Physical therapist" means an individual who is licensed as defined in accordance with KRS 327.010.

(28) "Physical therapist assistant" means a skilled health care worker who:

(a) Is certified by the Kentucky Board of Physical Therapy; and

(b) Performs physical therapy and related duties as assigned by the supervising physical therapist.

(29) "Plan of Care" or "POC" means a written individualized plan developed by:

(a) An SCL recipient or an SCL recipient's legal representative;

(b) Case manager or support broker; and

(c) Other designated by the SCL recipient if the SCL recipient designates any other.

(30) [~~(22)~~] "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(31) [~~(23)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(32) ~~[(24) "Qualified mental retardation professional" or "QMRP" means an individual who has at least one (1) year of experience working with persons with mental retardation or developmental disabilities and meets the professional criteria in accordance with 42 C.F.R. 483.430.~~

~~(25)~~] "Registered nurse" or "RN" means a person who is currently licensed as defined in KRS 314.011(5), and who has one (1) year or more experience as a professional nurse.

(33) Representative is defined in KRS 205.5605(6).

(34) "SCL mental retardation professional" or "SCL MRP" means an individual who has at least one (1) year of experience working with persons with mental retardation or developmental disabilities and:

(a) Is a doctor of medicine or osteopathy;

(b) Is a registered nurse; or

(c) Holds at least a bachelor's degree in a human services field including sociology, special education, rehabilitation counseling, or psychology.

(35) [~~(26)~~] "SCL provider" means an entity that meets the criteria established in Section 3 of this administrative regulation.

(36) [~~(27)~~] "SCL recipient" means an individual who meets the criteria established in Section 2 of this administrative regulation.

(37) [~~(28)~~] "Social worker" means an individual licensed by the Kentucky Board of Social Work under KRS 335.080, 335.090, or

335.100.

(38) [(29)] "Speech therapist" means an individual who is licensed in accordance with KRS 334A.030.

(39) "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance and support to a consumer; and

(b) Assist the consumer in any other aspects of CDO.

(40) [(30)] "Supports for community living" or "SCL" means home and community-based waiver services for an individual with mental retardation or a developmental disability.

(41) "Support spending plan" means a plan for a consumer that identifies:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance.

Section 2. SCL Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the SCL program, an individual shall:

(a) Be placed on the SCL waiting list in accordance with Section 6 of this administrative regulation;

(b) Receive notification of potential SCL funding in accordance with Section 6 of this administrative regulation;

(c) Meet ICF-MR-DD patient status requirements established in 907 KAR 1.022;

(d) Meet Medicaid eligibility requirements established in 907 KAR 1:605;

(e) Submit an application packet to the department [DMHMR] which shall contain:

1. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350;

2. [The Freedom of Choice of Home and Community Based Waiver for Persons with MR-DD Service Providers Form, MAP-4102,

3.] The MAP-351 [MAP-351B] Assessment Form;

3. [4. The level of care determination;

5.] The results of a physical examination that was conducted within the last twelve (12) months;

4. [6.] A MAP-10, statement of the need for long-term care services, which shall be signed and dated by a physician or an SCL MRP [a QMRP] and be less than one (1) year old;

5. [7.] The results of a psychological examination completed by a licensed psychologist or psychologist with autonomous functioning;

6. [8.] A social case history which is less than one (1) year old;

7. [9.] A projection of the needed supports and a preliminary MAP-109 [MAP-145-SCL] plan of care for meeting those needs; and

8. [10.] A MAP-24C documenting an individual's status change; and

9. A copy of the letter notifying the SCL recipient of an SCL funding allocation; and

(f) Receive notification of an admission packet approval from the department.

(2) To maintain eligibility as an SCL recipient:

(a) An individual shall be administered an NC-SNAP assessment by the department in accordance with 907 KAR 1:155;

(b) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(c) An ICF-MR-DD level of care determination shall be performed by the department at least once every twelve (12) months[; and

(d) An SCL provider shall notify the local DCBS office and the department on a MAP-24C form if an SCL recipient is:

1. Terminated from the SCL waiver program;

2. Admitted to an ICF-MR-DD facility, or

3. Transferred to another Medicaid waiver program.]

(3) An SCL waiver service shall not be provided to an SCL recipient who is receiving a service in another Medicaid waiver program or is an inpatient of an ICF-MR-DD or other facility.

(4) The department may exclude from receiving an SCL waiver service an individual for whom the aggregate cost of SCL waiver services would reasonably be expected to exceed the cost of ICF-MR-DD services.

(5) Involuntary termination and loss of an SCL waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to access an SCL waiver service within sixty (60) days of notification of potential funding without good cause shown.

1. The individual or legal representative shall have the burden of documenting good cause, including:

a. A statement signed by the recipient or legal representative,

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(b) An SCL recipient or legal representative fails to access the required service as outlined in the plan of care [ISP] for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan for an individual who does reside in a facility;

(c) An SCL recipient changes residence outside the Commonwealth of Kentucky; or

(d) An SCL recipient does not meet ICF-MR-DD patient status criteria.

(6) Involuntary termination of a service to an SCL recipient by an SCL provider shall require:

(a) Simultaneous notice to the SCL recipient or legal representative and the case manager or support broker at least twenty (20) days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The SCL recipient's right to appeal the intended action through the provider's appeal or grievance process;

(b) Submittal of a MAP-24C to the department and to DMR at the time [DMR-001 to DMHMR at least twenty (20) days prior to the effective date] of the intended action; and

(c) The case manager or support broker in conjunction with the provider to:

1. Provide the SCL recipient with the name, address, and telephone number of each current SCL provider in the state;

2. Provide assistance to the SCL recipient in making contact with another SCL provider;

3. Arrange transportation for a requested visit to an SCL provider site;

4. Provide a copy of pertinent information to the SCL recipient or legal representative;

5. Ensure the health, safety and welfare of the SCL recipient until an appropriate placement is secured;

6. Continue to provide supports until alternative services or another placement is secured; and

7. Provide assistance to ensure a safe and effective service transition.

(7) Voluntary termination and loss of an SCL waiver program placement shall be initiated if an SCL recipient or legal representative submits a written notice of intent to discontinue services to the service provider, to the department and to DMR [and to DMHMR].

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The SCL recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 3. Non-CDO Provider Participation. (1) In order to provide a non-CDO [an] SCL waiver service in accordance with Section 4 of this administrative regulation, an SCL provider shall:

(a) Be certified by the department prior to the initiation of the service;

(b) Be recertified at least annually by the department; and

(c) Have a main office within the Commonwealth of Kentucky.

(2) An SCL provider shall comply with 907 KAR 1:671, 907 KAR 1:672, 907 KAR 1:673 and 902 KAR 20:078.

(3) An SCL provider shall have a governing body that shall:

(a) Be a legally constituted entity within the Commonwealth of Kentucky;

(b) Not contain a majority of owners;

(c) Be responsible for the overall operation of the organization that shall include:

1. Establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an SCL recipient supported by the agency;

2. Appointing and annually evaluating the executive director;

3. Delegating the authority and responsibility for the management of the affairs of the agency in accordance with written policy and procedures that comply with this administrative regulation;

4. Meeting as a whole at least quarterly to fulfill its ongoing responsibility and maintaining a record of the discharge of its duties; and

5. Orienting a new member of the governing body to the operation of the organization, including the roles and responsibilities of board members.

(4) An SCL provider shall:

(a) Ensure that an SCL waiver service is not provided to an SCL recipient by a staff member of the SCL provider who has one (1) of the following blood relationships to the SCL recipient.

1. Child;

2. Parent;

3. Sibling; or

4. Spouse;

(b) Not enroll an SCL recipient for whom they cannot meet the support needs;

(c) Have and follow written criteria that comply with this administrative regulation for determining the eligibility of an individual for admission to services; and

(d) Document any denial for a service and the reason for the denial, and identify resources necessary to successfully support the denied SCL recipient in the community.

(5) An SCL provider shall maintain documentation of its operations which shall include:

(a) An annual review of written policy and procedures;

(b) A written description of available SCL waiver services;

(c) A current table of organization;

(d) A memorandum of understanding with an SCL case management provider with whom they share plans of care [individual support plans],

(e) Information regarding satisfaction of an SCL recipient and the utilization of that information;

(f) A quality improvement program; and

(g) Documentation of achievement of outcomes based on best practice standards as approved by the department.

(6) An SCL provider shall:

(a) Maintain accurate fiscal information which shall include documentation of revenue and expenses;

(b) Maintain a written schedule of policy relevant to rates and charges that shall be available to any individual upon request;

(c) Meet the following requirements if responsible for the management of SCL recipient funds:

1. Separate accounting shall be maintained for each SCL recipient or for his or her interest in a common trust or special account;

2. Account balance and records of transactions shall be provided to the SCL recipient or legal representative on a quarterly basis; and

3. The SCL recipient or legal representative shall be notified if a large balance is accrued that may affect Medicaid eligibility.

(7) An SCL provider shall have a written statement of its mission and values, which shall:

(a) Support empowerment and informed decision-making;

(b) Support and assist people to remain connected to natural support networks; and

(c) Promote dignity and self-worth.

(8) An SCL provider shall have written policy and procedures for communication and interaction with a family and legal representative of an SCL recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction by direct care staff;

(c) Require prompt notification of any unusual occurrence;

(d) Require visitation to the SCL recipient at a reasonable time, without prior notice and with due regard for the SCL recipient's right of privacy;

(e) Require involvement in decision making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the family being supported.

(9) An SCL provider shall ensure the rights of an SCL recipient by:

(a) Making available a description of the rights and the means by which they can be exercised and supported which shall include:

1. The right to time, space, and opportunity for personal privacy;

2. The right to communicate, associate and meet privately with the person of choice;

3. The right to send and receive unopened mail;

4. The right to retain and use personal possessions including clothing and grooming articles; and

5. The right to private, accessible use of the telephone;

(b) Having a grievance and appeals system that includes an external mechanism for review of complaints; and

(c) Complying with the Americans with Disabilities Act (28 C.F.R. 35).

(10)(a) An SCL provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that.

1. A covered service is provided, or

2. The recipient turns twenty-one (21), if the recipient is under the age of twenty-one (21);

(b) All records and incident reports shall be made available to the:

1. [The] department;

2. DMHMR or its designee;

3. [The Commonwealth of Kentucky,] Cabinet for Health and Family Services, Office of Inspector General or its designee;

4. [The United States] General Accounting Office or its designee;

5. [The Commonwealth of Kentucky,] Office of the Auditor of Public Accounts or its designee;

6. [The Commonwealth of Kentucky,] Office of the Attorney General or its designee,

7. DCBS [The Commonwealth of Kentucky, Cabinet for Health and Family Services, Department for Community Based Services]; or

8. [The] Centers for Medicare and Medicaid Services.

(11) An SCL provider shall cooperate with monitoring visits from monitoring agents.

(12) An SCL provider shall maintain a record for each SCL recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error that is initialed and dated;

and

(d) Contain no blank lines in between each entry.

(13) A record of each SCL recipient who is served shall:

(a) Contain all information necessary for the delivery of the SCL recipient's services;

(b) Be cumulative;

(c) Be readily available;

(d) Contain documentation which shall meet the requirements of Section 4 of this administrative regulation;

(e) Contain the following specific information:

1. The SCL recipient's name, Social Security number and Medicaid identification number (MAID);

2. The intake or face sheet;

3. The MAP-351 [~~MAP-351B~~] Assessment form completed at least annually;

4. The current plan of care [~~ISP~~];

5. The training objective for any support which facilitates achievement of the SCL recipient's chosen outcomes;

6. A list containing emergency contact telephone numbers;

7. The SCL recipient's history of allergies with appropriate allergy alerts for severe allergies;

8. The SCL recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

9. A recognizable photograph of the SCL recipient;

10. Legally-adequate consent, updated annually, for the provision of services or other treatment requiring emergency attention and shall be located at each service site;

11. The individual educational plan (IEP) or individual family service plan (IFSP), if applicable;

12. The SCL recipient's social history updated at least annually;

13. The results of an annual physical exam;

14. The Long Term Care Facilities and Home and Community Based Program Certification Form, MAP-350 updated annually;

15. Psychological evaluation;

16. [~~Original and~~] Current level of care certification; and

17. The MAP-552K, Department for Community Based Services Notice of Availability for Long Term Care/Waiver Agency/Hospice Form in the case management and residential record, [~~and~~

~~18. A copy of the approved SCL-1 form,~~]

(f) Be maintained by the provider in a manner to ensure the confidentiality of the SCL recipient's record and other personal information and to allow the SCL recipient or legal representative to determine when to share the information as provided by law;

(g) Have the safety from loss, destruction or use by an unauthorized person ensured by the provider;

(h) Be available to the SCL recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record; and

(i) Have a corresponding legend which the provider shall make readily accessible.

(14) An SCL provider shall:

(a)1. Ensure that each staff and volunteer performing direct care or a supervisory function[~~, prior to providing direct care to a recipient,~~] has tested negatively for tuberculosis within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; and

2. Maintain documentation of each staff person's and if a volunteer performs direct care or a supervisory function, the volunteer's negative tuberculosis test;

(b) Have written personnel guidelines for each employee to include:

1. Salary range;

2. Vacation and leave procedures;

3. Health insurance;

4. Retirement benefits;

5. Opportunity for continuing education; and

6. Grievance procedures;

(c) Provide a written job description for each staff person which describes the employee's duties and responsibilities;

(d) Annually review each job description;

(e)[~~1.~~] For each potential employee[~~, prior to employment,~~] obtain:

1. Prior to employment, the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;

2. Within fourteen (14) days of the date of hire, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to employment, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;

(f) Annually, for twenty-five (25) percent of employees randomly selected, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to employment;

(g) For a volunteer expected to perform direct care or a supervisory function obtain:

1. Prior to the date the individual began serving as a volunteer, the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;

2. Within fourteen (14) days of the date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470; and

3. Prior to the date the individual began serving as a volunteer, the results of a nurse aide abuse registry check as described in 906 KAR 1:100;

(h) Annually, for twenty-five (25) percent of volunteers randomly selected, performing direct care staff or a supervisory function, obtain the results of a criminal record check from the Kentucky Administrative Office of the Courts and equivalent out-of-state agency if the individual resided or worked outside of Kentucky during the year prior to volunteering;

(i) Not employ or place an individual as a volunteer who:

1. Has a prior conviction of an offense delineated in KRS 17.165(1) through (3);

2. Has a prior felony conviction;

3. Has a conviction of abuse or sale of illegal drugs;

4. Has a conviction of abuse, neglect or exploitation;

5. Has a Cabinet for Health and Family Services finding of child abuse or neglect pursuant to the central registry; or

6. Is listed on the nurse aide abuse registry;

(j) Not employ or place an individual as a volunteer to transport an SCL recipient if the individual has a driving under the influence (DUI) conviction during the past year; and

(k) [~~a criminal record check from the Administrative Office of the Courts in each state in which the individual resided or worked in during the previous year; or~~

~~2. For an employee who resided or worked outside the Commonwealth during the previous year, obtain a criminal record check from the Administrative Office of the Courts or the state's designated equivalent agency;~~

~~(f) For twenty-five (25) percent of employees, randomly selected, obtain a criminal record check from the Administrative Office of the Courts, or other states designated equivalent annually for each state in which the individual resided or worked in during the previous year;~~

~~(g) Obtain a criminal record check from the Administrative Office of the Courts prior to placement as a volunteer performing direct care staff or a supervisory function, and twenty-five (25) percent of volunteers, randomly selected, annually thereafter if the individual is placed;~~

~~(h) Not employ or place an individual as a volunteer with a prior conviction of an offense delineated in KRS 17.165(1) through (3) or prior felony conviction; and~~

~~(i)~~] Evaluate the performance and competency of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter.

(15) An SCL provider shall have:

(a) [~~Have~~] An executive director who:

1.a. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; or

b. Is a registered nurse; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served individuals with mental retardation or a developmental disability;

(b) [Have] A program director of the SCL waiver program who:

1. Has a minimum of one (1) year of previous supervisory responsibility in an organization which served individuals with mental retardation or developmental disabilities;

2. Is an SCL MRP [a QMRP]; and

3. May serve as executive director if the requirements established in paragraph (a) of this subsection of this administrative regulation are met;

(c) [Have] Adequate direct-contact staff who:

1.a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

b.(i) Is at least twenty-one (21) years old; and

(ii) Is able to adequately communicate with recipients and staff;

2. Has a valid Social Security number or valid work permit if not a U.S. citizen;

3. Can understand and carry out instructions; and

4. Has ability to keep simple records; and

(d) [Has] Adequate supervisory staff who:

1.a.(i) Is eighteen (18) years or older; and

(ii) Has a high school diploma or GED; or

b.(i) Is at least twenty-one (21) years old; and

(ii) Has a minimum of one (1) year experience in providing services to individuals with mental retardation or developmental disability;

2. Is able to adequately communicate with the recipients, staff, and family members;

3. Has a valid Social Security number or valid work permit if not a U S. citizen; and

4. Has ability to perform required record keeping

(16) An SCL provider shall establish written guidelines that address the health, safety and welfare of an SCL recipient, which shall include:

(a) Ensuring the health, safety and welfare of the SCL recipient;

(b) Maintenance of sanitary conditions;

(c) Ensuring each site operated by the provider is equipped with:

1. An operational smoke detector placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations; one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(d) Ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by an SCL recipient not exceeding 120 degrees Fahrenheit;

(e) Establishing written procedures concerning the presence of deadly weapons as defined in KRS 500.080 which shall ensure:

1. Safe storage and use, and

2. That firearms and ammunition are permitted:

a. Only in a family [care] home provider or an adult foster care home; and

b. Only if stored separately and under double lock;

(f) Establishing [Establish] written procedures concerning the safe storage of common household items;

(g) Ensuring that the nutritional needs of an SCL recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(h) Unless the employee is a licensed or registered nurse, ensuring that staff administering medication:

1. Have specific training provided by a licensed medical professional per a DMR-approved curriculum and documented competency on medication administration, medication cause and effect and proper administration and storage of medication; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication and dosage and accompany and be administered to an SCL recipient at a program site other than his or her residence if necessary; and

d. Be documented on a medication administration form and properly disposed of, if discontinued; and

(i) Policy and procedures for ongoing monitoring of medication administration.

(17) An SCL provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include instruction for notification procedures and the use of alarm and signal systems to alert an SCL recipient according to his or her disability;

(c) Include an evacuation drill to be conducted in three (3) minutes or less, documented at least quarterly and scheduled to include a time when an SCL recipient is asleep; and

(d) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An SCL provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization, and practice of the agency;

(b) Provide or arrange for the provision of competency-based training to each employee to teach and enhance skills related to the performance of their duties;

(c) Require documentation of all training which shall include:

1. The type of training provided:

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(d) Ensure that each employee prior to independent functioning, completes training which shall include:

1. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

2. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

3. Crisis prevention and management;

4. Identification and prevention of abuse, neglect, and exploitation;

5. Rights of individuals with disabilities; and

6. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(e) Ensure that each employee that will be administering medications, prior to independent functioning, completes training which shall include;

1. Medication administration training per cabinet-approved curriculum;

2. Medications and seizures;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

4. Cardiopulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

5. Crisis prevention and management;

6. Identification and prevention of abuse, neglect, and exploitation;

7. Rights of individuals with disabilities; and

8. Individualized instruction on the needs of the SCL recipient to whom the trainee provides supports;

(f) Ensure that all employees complete core training, consistent with a DMHMR-approved curriculum, no later than six (6) months from the date of employment, which shall include:

1. Values, attitudes, and stereotypes;

2. Building community inclusion;

3. Person-centered planning;

4. Positive behavior support;

5. Human sexuality and persons with disabilities;

6. Self determination; and

7. Strategies for successful teaching;

(g) Not be required to receive the training specified in this sec-

tion if the provider is:

1. An occupational therapist providing occupational therapy;

2. A physical therapist providing physical therapy;

3. A psychologist or psychologist with autonomous functioning providing psychological services; or

4. A speech therapist providing speech therapy; [~~and~~]

(h) Ensure that an individual volunteer performing a direct care staff or a supervisory function receives training prior to working independently, which shall include:

1. Orientation to the agency;

2. Individualized instruction on the needs of the SCL recipient to whom the volunteer provides support;

3. First aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Cardiopulmonary resuscitation, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

(i) On or after the first day of the month following the effective date of this emergency administrative regulation, ensure that each new case manager hired complete DMR-approved case management training within:

1. The first three (3) months from the date of hire; or

2. As soon as possible following the third month of hire if the case manager is unable to complete training within the first three (3) months due to unavailability of the training.

Section 4. Non-CDQ Covered Services. (1) A non-CDQ SCL waiver service shall:

(a) Be prior authorized by the department; and

(b) Be provided pursuant to the plan of care [~~individual support plan~~].

(2) The following services provided to an SCL recipient by an SCL waiver provider shall be covered by the department:

(a) Adult day training which shall:

1. Support the SCL recipient to participate in daily meaningful routines in the community;

2. Stress training in:

a. The activities of daily living;

b. Self-advocacy;

c. Adaptive and social skills; and

d. Vocational skills;

3. Be provided in a nonresidential or community setting that may;

a. Be a fixed location; or

b. Occur in public venues.

4. Not be diversional in nature;

5. Be provided as on-site services which shall:

a. Include facility-based services provided on a regularly-scheduled basis;

b. Lead to the acquisition of skills and abilities to prepare the participant for work or community participation; or

c. Prepare the participant for transition from school to work or adult support services;

6. Be provided as off-site services which:

a. Shall include services provided in a variety of community settings;

b. Shall provide access to community-based activities that cannot be provided by natural or other unpaid supports;

c. Shall be designed to result in increased ability to access community resources without paid supports;

d. Shall provide the opportunity for the participant to be involved with other members of the general population;

e. May be provided as an enclave or group approach to training in which participants work as a group or dispersed individually throughout an integrated work setting with people without disabilities;

f. May be provided as a mobile crew performing work in a variety of community businesses or other community settings with supervision by the provider; and

g. May be provided as entrepreneurial or group approach to training for participants to work in a small business created specifically by or for the recipient or recipients;

7. Ensure that any recipient performing productive work that benefits the organization be paid commensurate with compensation to members of the general work force doing similar work;

8. Require that a provider conduct an orientation informing the recipient of supported employment and other competitive opportunities in the community at least annually;

9. Be provided at a time mutually agreed to by the recipient and provider;

10.a. Be provided to recipients age twenty-two (22) or older;

b. Be provided to recipients age sixteen (16) to twenty-one (21) as a transition process from school to work or adult support services;

11. Be documented by:

a. A time and attendance record which shall include

(i) The date of the service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary staff note which shall include:

(i) The month, day, and year for the time period covered by each note written;

(ii) [~~Progress toward outcomes identified in the ISP;~~

~~(iii)~~] Progression, regression, and maintenance toward outcomes identified in the plan of care, and

(iii) [~~(iv)~~] The signature, date of signature, and title of individual preparing the summary staff note;

12. Be limited to five (5) days per week, 255 days maximum per year;

13. Not exceed eight (8) hours per day, five (5) days [~~or forty (40) hours~~] per week; and

14. Not exceed sixteen (16) hours per day if provided in combination with community living supports or supported employment;

(b) An assessment service including a comprehensive assessment which shall:

1. Identify an SCL recipient's needs and the services that the SCL recipient or his or her family cannot manage or arrange for on his or her behalf;

2. Evaluate an SCL recipient's physical health, mental health, social supports, and environment;

3. Be requested by an individual requesting SCL services or a family or legal representative of the individual;

4. Be conducted within seven (7) calendar days of receipt of the request for assessment;

5. Include at least one (1) face-to-face contact with the SCL recipient and, if appropriate, his or her family by the assessor in the SCL recipients home; and

6. Not be reimbursable if the individual does not receive a level of care certification;

(c) A reassessment service which shall:

1. Determine the continuing need for SCL waiver services;

2. Be performed at least every twelve (12) months;

3. Be conducted using the same procedures as for an assessment service;

4. Be conducted by a SCL case manager or support broker and submitted to the department no more than three (3) weeks prior to the expiration of the current level of care certification to ensure that certification is consecutive;

5. Not be reimbursable if conducted during a period that the SCL recipient is not covered by a valid level of care certification; and

6. Not be retroactive;

(d) Behavioral support which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Be provided to assist the SCL recipient to learn new behaviors that are directly related to existing challenging behaviors or functionally equivalent replacement behaviors for identified challenging behaviors;

3. Include a functional assessment of the SCL recipient's behavior which shall include:

a. An analysis of the potential communicative intent of the behavior;

b. The history of reinforcement for the behavior;

c. Critical variables that preceded [~~precede~~] the behavior;

d. Effects of different situations on the behavior; and

e. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

4. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Be implemented by SCL provider staff in all relevant environments and activities;

c. Be revised as necessary;

d. Define the techniques and procedures used;

e. Be designed to equip the recipient to communicate his or her needs and to participate in age-appropriate activities;

f. Include the hierarchy of behavior interventions ranging from the least to the most restrictive,

g. Reflect the use of positive approaches; and

h. Prohibit the use of prone or supine restraint, corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

5. Include the provision of training to other SCL providers concerning implementation of the behavioral support plan;

6. Include the monitoring of an SCL recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. The reports of an SCL provider involved in implementing the behavioral support plan;

7. Provide for the design, implementation, and evaluation of systematic environmental modifications;

8. Be provided by a behavior support specialist who shall have:

a. A master's degree with formal graduate course work in a behavioral science; and

b. One (1) year of experience in behavioral programming;

9. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the behavioral specialist; and

10. Be limited to ten (10) hours for an initial functional assessment and six (6) hours for the initial development of the behavior support plan and staff training;

(e) Case management which shall include:

1. Initiation, coordination, implementation, and monitoring of the assessment, reassessment, evaluation, intake, and eligibility process;

2. Assisting an SCL recipient in the identification, coordination, and arrangement of the support team and support team meetings;

3. Assisting an SCL recipient and the support team to develop, update, and monitor the plan of care [~~ISP~~] which shall:

a. Be initially developed within thirty (30) days of the initiation of the service using person-centered guiding principles;

b. Be updated at least annually or as changes occur;

c. Be submitted on the MAP-351 [~~MAP-351B and MAP-146 SCL forms~~]; and

d. Include any modification [~~the addendum~~] to the plan of care [~~ISP~~] and be sent to the department [~~DMHMR~~] within fourteen (14) days of the effective date that the change occurs with the SCL recipient;

4. Assisting an SCL recipient in obtaining a needed service outside those available by the SCL waiver utilizing referrals and information;

5. Furnishing an SCL recipient and legal representative with a listing of each available SCL provider in the service area;

6. Maintaining documentation signed by an SCL recipient or legal representative of informed choice of an SCL provider and of any change to the selection of an SCL provider and the reason for the change;

7. Timely distribution of the plan of care [~~ISP~~], crisis prevention plan, assessment, and other documents to chosen SCL service providers;

8. Providing an SCL recipient and chosen SCL providers twenty-four (24) hour telephone access to a case management staff person;

9. Working in conjunction with an SCL provider selected by an SCL recipient to develop a crisis prevention plan which shall be:

a. Individual-specific;

b. Annually reviewed; and

c. Updated as a change occurs;

10. Assisting an SCL recipient in planning resource use and assuring protection of resources;

11. Services that are exclusive of the provision of a direct service to an SCL recipient;

12. Monthly face-to-face contact with an SCL recipient;

13. Monitoring the health, safety, and welfare of an SCL recipient;

14. Monitoring all of the supports provided to an SCL recipient;[~~.~~]

15. Notifying the local DCBS office, the department and DMR on a MAP-24C form if an SCL recipient is:

a. Terminated from the SCL Waiver Program;

b. Admitted to an ICF-MR-DD;

c. Admitted to a hospital; or

d. Transferred to another Medicaid Waiver Program;

16. Establishing a human rights committee which shall:

a. Include an:

(i) SCL recipient;

(ii) Individual not affiliated with the SCL provider; and

(iii) Individual who has knowledge and experience in rights issues;

b. Review and approve, prior to implementation and at least annually thereafter, all plans of care [~~ISPs~~] with rights restrictions;

c. Review and approve prior to implementation and at least annually thereafter, in conjunction with the SCL recipient's team, behavior support plans that include highly-restrictive procedures or contain rights restrictions; and

d. Review the use of a psychotropic medication by an SCL recipient [~~with or~~] without an Axis I diagnosis;

17. [~~16.~~] Establishing a behavior intervention committee which shall:

a. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior support plan;

b. Be separate from the human rights committee;

c. Review and approve prior to implementation and at least annually thereafter or as changes are needed, in conjunction with the SCL recipient's team, all behavior support plans; and

d. Review the use of a psychotropic medication by an SCL recipient [~~with or~~] without an Axis I diagnosis and recommend an alternative intervention if appropriate;

18. [~~17.~~] Documentation with a monthly summary note which shall include:

a. Documentation of monthly contact with each chosen SCL provider which shall include monitoring of the delivery of services and the effectiveness of the assessment of needs and plan of care;

b. Documentation of monthly face-to-face contact with an SCL recipient; and

c. Progress towards outcomes identified in the plan of care [~~ISP~~];

19. [~~18.~~] Provision by a case manager who shall:

a. Have a bachelor's degree from an accredited institution in a human services field [~~in a human service~~];

b. Be a registered nurse licensed in accordance with KRS 314.011;

c. Be a qualified social worker;

d. Be a licensed marriage and family therapist;

e. Be a professional clinical counselor;

f. Be a certified psychologist; or

g. Be a licensed psychological practitioner;

20. [~~19.~~] Supervision by a case management supervisor who shall be an SCL MRP [~~a QMRP~~], and

21. [~~20.~~] Documentation with a detailed monthly summary note which shall include:

a. The month, day, and year for the time period each note covers;

b. Progression, regression, and maintenance toward outcomes identified in the plan of care [~~ISP~~]; and

c. The signature, date of signature, and title of the individual preparing the note;

(f) Children's day habilitation which shall be:

1. The provision of support, training, and intervention in the areas of:

a. Self-care;

b. Sensory/motor development;

c. Daily living skills;

d. Communication; and

e. Adaptive and social skills;

2. Provided in a nonresidential or community setting;

3. Provided to enable the recipient to participate in and access community resources;

4. Provided to help remove or diminish common barriers to participation in typical roles in community life;

5. Provided at a time mutually agreed upon by the recipient and provider;

6. Limited to:

a. Individuals who are in school and up to sixteen (16) years of age;

b. Up to eight (8) hours per day, five (5) days per week; and

c. Up to sixteen (16) hours per day in combination with community living supports; and

7. Documented by:

a. A time and attendance record which shall include:

(i) The date of service;

(ii) The beginning and ending time of the service;

(iii) The location of the service; and

(iv) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly staff note which shall include:

(i) The month, day, and year for the time period each note covers;

(ii) [~~Progress toward outcomes identified in the ISP,~~

~~(iii)~~] Progression, regression, or maintenance of outcomes identified in the plan of care [~~ISP~~]; and

(iii) [~~(iv)~~] The signature, date of signature, and title of the individual preparing the summary staff note;

(g) Community living supports which shall:

1. Be provided to facilitate independence and promote integration into the community for an SCL recipient residing in his or her own home or in his or her family's home;

2. Be supports and assistance which shall be related to chosen outcomes and not be diversional in nature. This may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Leisure choices;

j. Participation in community activities;

k. Therapeutic goals; or

l. Nonmedical care not requiring nurse or physician intervention;

3. Not replace other work or day activities;

4. Be provided on a one-on-basis;

5. Not be provided at an adult day-training or children's day-habilitation site;

6. Be documented by:

a. A time and attendance record which shall include:

(i) The date of the service;

(ii) The beginning and ending time of the service; and

(iii) The signature, date of signature and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day and year for the time period each note covers;

(ii) [~~Progress toward outcomes identified in the ISP,~~

~~(iii)~~] Progression, regression and maintenance toward outcomes identified in the plan of care [~~ISP~~]; and

(iii) [~~(iv)~~] The signature, date of signature and title of the individual preparing the summary note; and

7. Be limited to sixteen (16) hours per day alone or in combination with adult day training, children's day habilitation, and supported employment;

(h) Occupational therapy which shall be

1. A physician-ordered evaluation of an SCL recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician ordered services in a specified amount and duration to guide an SCL recipient in the use of therapeutic, creative, and self-care activities to assist an SCL recipient in obtaining the highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by an occupational therapist or an occupational therapy assistant supervised by a licensed occupational therapist in accordance with 201 KAR 28:130, and

6. Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care [~~ISP~~];

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date of signature and title of the individual providing the service;

(i) Physical therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient by applying muscle, joint, and functional ability tests;

2. Physician-ordered treatment in a specified amount and duration to assist an SCL recipient in obtaining the highest possible level of functioning;

3. Training of another SCL provider on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Provided by a physical therapist or a certified physical therapist assistant supervised by a licensed physical therapist in accordance with 201 KAR 22:001 and 201 KAR 22:020; and

6. Documented by a detailed staff note which shall include:

a. Progress made toward outcomes identified in the plan of care [~~ISP~~];

b. The date of the service;

c. Beginning and ending time of the service; and

d. The signature, date of signature and title of the individual providing the service;

(j) Psychological services which shall.

1. Be provided to an SCL recipient who is dually diagnosed to coordinate treatment for mental illness and a psychological condition;

2. Be utilized if the needs of the SCL recipient cannot be met by behavior support or another covered service;

3. Include:

a. The administration of psychological testing;

b. Evaluation;

c. Diagnosis; and

d. Treatment;

4. Be incorporated into the plan of care [~~ISP~~] with input from the psychological service provider for the development of program-wide support;

5. Be provided by a psychologist or a psychologist with autonomous functioning; and

6. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time of the service; and

c. The signature, date of signature and title of the individual providing the service;

(k) Residential support service which shall:

1. Include twenty-four (24) hour supervision in:

a. A staffed residence which shall not have greater than three (3) recipients of publicly-funded supports in a home rented or owned by the SCL provider;

b. A group home which shall be licensed in accordance with 902 KAR 20:078 and shall not have greater than eight (8) SCL recipients;

c. A family [~~care~~] home provider which shall not have greater than three (3) recipients of publicly-funded supports living in the home; or

d. An adult foster care home which shall not have greater than

three (3) recipients of publicly-funded supports aged eighteen (18) or over living in the home;

2. Utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in the event of an emergency;

3. Not utilize a motor home;

4. Provide a sleeping room which ensures that an SCL recipient:

a. Does not share a room with an individual of the opposite sex who is not the SCL recipient's spouse;

b. Under the age of eighteen (18) does not share a room with an individual that has an age variance of more than five (5) years;

c. Does not share a room with an individual who presents a potential threat; and

d. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the SCL recipient's health and comfort;

5. Provide assistance with daily living skills which shall include:

a. Ambulation;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning and preparation;

h. Laundry;

i. Budgeting and financial matters;

j. Home care and cleaning; or

k. Medication management;

6. Provide supports and training to obtain the outcomes of the SCL recipient as identified in the plan of care [~~individual support plan~~];

7. Provide or arrange for transportation to services, activities, and medical appointments as needed;

8. Include participation in medical appointments and follow-up care as directed by the medical staff; and

9. Be documented by a detailed monthly summary note which shall include:

a. The month, day, and year for the time period the note covers;

b. Progression, regression and maintenance toward outcomes identified in the plan of care [~~ISP~~];

c. Pertinent information regarding the life of the SCL recipient; and

d. The signature, date of signature, and title of the individual preparing the staff note;

(l) Respite service which shall be:

1. Provided only to an SCL recipient unable to independently administer self-care;

2. Provided in a variety of settings;

3. Provided on a short-term basis due to absence or need for relief of an individual providing care to an SCL recipient;

4. Provided only to an SCL recipient who resides in a family [~~care~~] home provider, adult foster care home, or his or her own or family's home;

5. Limited to 1440 hours per calendar year; and

6. Documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the individual providing the service;

(m) Specialized medical equipment and supplies which shall.

1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;

2. Enable an SCL recipient to increase his or her ability to perform daily living activities or to perceive, control or communicate with the environment;

3. Be ordered by a physician and submitted on a MAP-95;

4. Include equipment necessary to the proper functioning of specialized items;

5. Not be available through the department's durable medical equipment, vision, hearing, or dental programs;

6. Meet applicable standards of manufacture, design and installation; and

7. Exclude those items which are not of direct medical or remedial benefit to the SCL recipient;

(n) Speech therapy which shall be:

1. A physician-ordered evaluation of an SCL recipient with a speech or language disorder;

2. A physician ordered habilitative service in a specified amount and duration to assist an SCL recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Training of other SCL providers on improving the level of functioning;

4. Exclusive of maintenance or the prevention of regression;

5. Be provided by a speech therapist, and

6 Documented by a detailed staff note which shall include:

a. Progress toward outcomes identified in the plan of care [~~ISP~~];

b. The date of the service;

c. The beginning and ending time; and

d. The signature, date of signature and title of the individual providing the service; or

(o) Supported employment which shall be:

1. Intensive, ongoing support for an SCL recipient to maintain paid employment in an environment in which an individual without a disability is employed,

2. Provided in a variety of settings;

3. Provided on a one-to-one basis;

4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub L. 99-457 (34 C.F.R. Subtitle B, Chapter III), proof of which shall be documented in the SCL recipient's file;

5. Exclusive of work performed directly for the supported employment provider;

6. Provided by a staff person who has completed a supported employment training curriculum conducted by staff of the cabinet or its designee;

7. Documented by:

a. A time and attendance record with shall include:

(i) The date of service;

(ii) The beginning and ending time; and

(iii) The signature, date of signature, and title of the individual providing the service; and

b. A detailed monthly summary note which shall include:

(i) The month, day, and year for the time period the note covers;

(ii) Progression, regression and maintenance toward outcomes identified in the plan of care [~~ISP~~]; and

(iii) The signature, date of signature and title of the individual preparing the note; and

8. Limited to forty (40) hours per week alone or in combination with adult day training.

Section 5. Section 5. Consumer Directed Option. (1) Covered services and supports provided to an SCL recipient participating in CDO shall include:

(a) A home and community support service which shall.

1. Be available only under the consumer directed option;

2. Be provided in the consumer's home or in the community;

3 Be based upon therapeutic goals and not diversional in nature;

4. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services; and

5 a Be respite for the primary caregiver; or

b Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

(i) Routine household tasks and maintenance;

(ii) Activities of daily living;

(iii) Personal hygiene;

(iv) Shopping;

(v) Money management;

(vi) Medication management;
(vii) Socialization;
(viii) Relationship building;
(ix) Leisure choices; or
(x) Participation in community activities; and
(b) A community day support service which shall:
1. Be available only under the consumer directed option;
2. Be provided in a community setting;
3. Be tailored to the consumer's specific personal outcomes related to the acquisition, improvement, and retention of skills and abilities to prepare and support the consumer for work or community activities, socialization, leisure or retirement activities;
4. Be based upon therapeutic goals and not diversional in nature; and
5. Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO SCL services.

(2) To be covered, a CDO service shall be specified in a consumer's plan of care;

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO SCL setting.

(4) A consumer, including a married consumer, shall choose providers and a consumer's choice of CDO provider shall be documented in the consumer's plan of care.

(5) A consumer may designate a representative to act on his or her behalf. The CDO representative shall:
(a) Be twenty-one (21) years of age or older;
(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and
(c) Be appointed by the consumer on a MAP-2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if:
(a) Imminent danger to the consumer's health, safety, or welfare exists; or
(b) The consumer fails to pay patient liability;

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care;

(9) Prior to a consumer's termination from CDO services, the support broker shall:
(a) Notify the SCL assessment or reassessment service provider of potential termination;
(b) Assist the consumer in developing a resolution and prevention plan;
(c) Allow at least thirty (30) but no more than ninety (90) days for the consumer to resolve the issue, develop and implement a prevention plan or designate a CDO representative;
(d) Complete, and submit to the department and to DMR, a MAP-2000 terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and
(e) Assist the consumer in transitioning back to traditional SCL services.

(10) Upon an involuntary termination of CDO services, the department shall:
(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and
(b) Except in a case where a consumer failed to pay patient liability, inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(11) A CDO provider:
(a) Shall be selected by the consumer;
(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;
(c) Shall be eighteen (18) years of age or older;
(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a US citizen;
(e) Shall be able to communicate effectively with the consumer, consumer representative or family;
(f) Shall be able to understand and carry out instructions;
(g) Shall be able to keep records as required by the consumer;
(h) Shall submit to a criminal background check conducted by the Kentucky Administrative Office of the Courts or equivalent agency from any other state, for each state in which the individual resided or worked during the year prior to selection as a provider of CDO services;
(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;
1. A consumer may employ a provider prior to a central registry check result being obtained for up to fourteen (14) days; and
2. If a consumer does not obtain a central registry check result within fourteen (14) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;
(j) Shall submit to a check of the nurse aide abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;
(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165(1) through (3);
(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;
(m) Shall be approved by the department;
(n) Shall maintain and submit timesheets documenting hours worked; and
(o) May be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of SCL recipients minus five (5) percent.
(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.
(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.
(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:
1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and
2. The department approves the adjustment.
(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:
1. If the proposed services are necessary to prevent imminent institutionalization;
2. The cost effectiveness of the proposed services; and
3. Protection of the consumer's health, safety, and welfare.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:
(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;
(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;
(c) Comply with applicable federal and state laws and requirements;
(d) Continually monitor a consumer's health, safety, and welfare; and
(e) Complete or revise a plan of care using person-centered planning principles.

(16) For a CDO participant, a support broker may conduct an assessment or reassessment.

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.

(2) There shall be three (3) classes of incidents including:

(a) A class I incident which shall:

1. Be minor in nature and not create a serious consequence;

2. Not require an investigation by the provider agency;

3. Be reported to the case manager or support broker within twenty-four (24) hours,

4. Be reported to the guardian as directed by the guardian; and

5. Be retained on file at the provider and case management or support brokerage agency;

(b) A class II incident which shall:

1. Be serious in nature;

2. Involve the use of physical or chemical restraint;

3. [~~Involve a medication error resulting in a physician or emergency room visit;~~

4.] Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery, and shall involve the case manager or support broker; and

4. [5.] Be reported by the provider agency to:

a. The case manager or support broker within twenty-four (24) hours of discovery;

b. The guardian within twenty-four (24) hours of discovery;

c. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within ten (10) calendar days of discovery, and shall include a complete written report of the incident investigation and follow up; and

(c) A class III incident which shall:

1.[a.] Be grave in nature;

2. Involve suspected abuse, neglect, or expolitation;

3. Involve a medication error which requires a medical intervention;

4 Be a death;

5. [~~b. Be a medication error that occurs over multiple days or results in a delay in obtaining critical medications; or~~

~~c. Be a medication error resulting in harm or hospitalization of the individual,~~

~~2.~~] Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

6. [3.] Be reported by the provider agency to:

a The case manager or support broker within eight (8) hours of discovery;

b. The guardian within eight (8) hours of discovery;

c. DCBS immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209; and

d. The assistant director of the Division of Mental Retardation, DMHMR, or designee, within eight (8) hours of discovery and shall include a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If the incident occurs after 5 p.m. EST on a weekday, or occurs on a weekend or holiday, notification to DMR shall occur on the following business day. The following documentation with a complete written report shall be submitted for a death:

(i) A current plan of care;

(ii) A current list of prescribed medications including PRN medications;

(iii) A current crisis plan;

(iv) Medication Administration Review (MAR) forms for the current and previous month;

(v) Staff notes from the current and previous month including details of physician and emergency room visits;

(vi) Any additional information requested by DMHMR;

(vii) A coroner's report when received; and

(viii) If performed, an autopsy report when received.

(3) All medication errors shall be reported to the Assistant Director of the Division of Mental Retardation, DMHMR, or designee on a monthly medication error report form by the 15th [~~tenth (10th)~~] of the following month.

Section 7. [6.] SCL Waiting List. (1) An individual applying for SCL waiver services shall be placed on a statewide waiting list which shall be maintained by the department.

(2) An individual shall be placed on the SCL waiting list based upon his or her region of origin in accordance with KRS 205.6317(3) and (4).

(3) In order to be placed on the SCL waiting list, an individual shall submit to the department a completed MAP-620, Application for MR-DD Services, which shall include the following:

(a) A signature from a physician or an SCL MRP [~~a QMRP~~] indicating medical necessity;

(b) A current and valid MR/DD diagnosis, including supporting documentation to validate the diagnosis; and

(c) Completion of the Axis I, II, and III.

(4) DMHMR or its designee shall validate the MAP-620 application information.

(5) Prior to April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD [~~ICF/MR/DD~~] shall be September 22, 1995 or the date of admission to the ICF-MR-DD [~~ICF/MR/DD~~], whichever is later, and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(6) Beginning April 1, 2003, the order of placement on the SCL waiting list for an individual residing in an ICF-MR-DD [~~ICF/MR/DD~~] shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual in accordance with subsection (7)(a)-(c) of this section.

(7) The order of placement on the SCL waiting list for an individual not residing in an ICF-MR-DD [~~ICF/MR/DD~~] shall be determined by chronological date of receipt of the MAP-620 and by category of need of the individual as follows:

(a) Emergency. The need shall be classified as emergency if an immediate service is needed as determined by any of the following if all other service options have been explored and exhausted:

1. Abuse, neglect or exploitation of the individual as substantiated by DCBS;

2. The death of the individual's primary caregiver and lack of alternative primary caregiver;

3. The lack of appropriate placement for the individual due to:

a. Loss of housing;

b. Inappropriate hospitalization; or

c. Imminent discharge from a temporary placement;

4. Jeopardy to the health and safety of the individual due to the primary caregiver's physical or mental health status; [~~or~~]

5. The attainment of the age of twenty (20) years and six (6) months, for an individual in the custody of DCBS, or

6. Imminent or current institutionalization in an ICF-MR-DD;

(b) Urgent. The need shall be classified as urgent if a service is needed within one (1) year as determined by:

1. Threatened loss of the individual's existing funding source for supports within the year due to the individual's age or eligibility;

2. The individual is residing in a temporary or inappropriate placement but his or her health and safety is assured;

3. The diminished capacity of the primary caregiver due to physical or mental status and the lack of an alternative primary caregiver; or

4. The individual exhibits an intermittent behavior or action that requires hospitalization or police intervention;

(c) Future planning. The need shall be classified as future planning if a service is needed in greater than one (1) year as determined by:

1. The individual is currently receiving a service through another funding source that meets his or her needs;

2. The individual is not currently receiving a service and does not currently need the service;

3. The individual is in the custody of DCBS and is less than twenty (20) years and six (6) months of age; or

4. The individual is less than twenty-one (21) years of age.

(8) If multiple applications are received on the same arrival date, a lottery shall be held to determine placement on the SCL waiting list within each category of need.

(9) A written notification of original placement on the SCL waiting list and any changes due to reconsideration shall be mailed to an individual or his or her legal representative and case management provider if identified.

(10) In determining chronological status, the original date of

receipt of a MAP- 620 shall be maintained and shall not change when an individual is moved from one (1) category of need to another.

(11) Maintenance of the SCL waiting list shall occur as follows:

(a) [~~During the first year of implementation of category of need, each individual currently on the SCL waiting list shall be contacted by phone or in person for validation to determine category of need,~~

~~(b)~~] Validation shall be completed based upon the chronological date of placement on the SCL waiting list within each geographic region; and

(b)1. [~~(c)~~] The department shall, at a minimum, annually update the waiting list during the birth month of an individual.

2. The individual or his or her legal representative and case management provider shall be contacted in writing to verify the accuracy of the information on the SCL waiting list and his or her continued desire to pursue placement in the SCL program.

3. If a discrepancy is noted in diagnostic information at the time of the annual update, the department may request a current diagnosis of MR/DD signed by a physician or SCL MRP [~~QMRP~~], including documentation supporting the diagnosis.

4. The requested data shall be received by the department within thirty (30) days from the date of the letter.

(12) Reassignment of category of need shall be completed based on the updated information and validation process.

(13) An individual or his or her legal representative may submit a written request for consideration of movement from one (1) category of need to another if there is a change in status of the individual.

(14) If an individual on the SCL waiting list in the emergency category of need is placed in an ICF-MR-DD [~~ICF/MR/DD~~], the category of need shall not change.

(15) The criteria for removal from the SCL waiting list shall be:

(a) After a documented attempt, the department is unable to locate the individual or his or her legal representative;

(b) The individual is deceased;

(c) Review of documentation reveals that the individual does not have a mental retardation diagnosis or a developmental disability diagnosis as defined in Section 1 of this administrative regulation;

(d) Notification of potential SCL funding is made and the individual or his or her legal representative declines the potential funding and does not request to be maintained on the SCL waiting list, or

(e) Notification of potential SCL funding is made and the individual or his or her legal representative does not, without good cause, complete the application process with the department within sixty (60) days of the potential funding notice date.

1. The individual or legal representative shall have the burden of providing documentation of good cause, including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers;

c. Copies of letters from providers; and

d. A copy of a transition plan for individuals residing in a facility.

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing, which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; or

b. The length of the transition plan, not to exceed one (1) year, and contingent upon continued active participation in the transition plan, for an individual who does reside in a facility.

(16) If notification of potential SCL funding is made and an individual or his or her legal representative declines the potential funding but requests to be maintained on the SCL waiting list.

(a) The individual shall be moved to the future planning category; and

(b) The chronological date shall remain the same.

(17) If an individual is removed from the SCL waiting list, the department shall mail written notification to the individual or his or her legal representative and the case management [~~SCL coordination~~] provider.

(18) The removal of an individual from the SCL waiting list shall not prevent the submittal of a new application at a later date

(19) The SCL waiting list, excluding the emergency category, shall be fixed as it exists ninety (90) days prior to the expected date of offering a placement based upon the allocation of new funding and shall be resumed following the allocation of new funding.

(20) An individual shall be allocated potential funding based upon:

(a) His or her region of origin in accordance with KRS 205 6317(3) and (4);

(b) His or her category of need; and

(c) His or her chronological date of placement on the SCL waiting list.

(21) To be allocated potential funding, an individual residing in an institution shall meet the following additional criteria:

(a) The treatment professionals determine that an SCL placement is appropriate for the individual; and

(b) The SCL placement is not opposed by the individual or his or her legal representative.

Section 8. [~~7.~~] Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120, and all applicable state and federal statutes and regulations.

(2) A SCL service provider choosing to utilize electronic signatures shall:

(a) Develop and implement a written security policy which shall:

1. Be adhered to by all of the provider's employees, officers, agents, and contractors;

2. Stipulate which individuals have access to each electronic signature and password authorization; and

3. Ensure that an electronic signature is created, transmitted, and stored in a secure fashion;

(b) Develop a consent form which shall:

1. Be completed and executed by each individual utilizing an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his or her responsibility in allowing the use of the electronic signature; and

(3) Produce to the department a copy of the agency's electronic signature policy, the signed consent form, and the original filed signature immediately upon request.

Section 9. [~~8.~~] Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

(4) An individual shall not appeal a category of need specified in Section 7 [6] of this administrative regulation.

Section 10. [~~9.~~] Incorporation by Reference. (1) "Supports for Community Living Manual, April 2007 [~~2006~~] edition", is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street,

Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON. Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to the coverage of home and community based waiver services provided as an alternative to institutionalization to individuals with mental retardation or a developmental disability. (The home and community based services program for individuals with mental retardation or a developmental disability is known as the "supports for community living" or "SCL" program).

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to the coverage of home and community based services provided to individuals with mental retardation or a developmental disability.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes a consumer directed option (CDO) program that allows, in accordance with KRS 205 5606, Medicaid SCL recipients to choose their providers of non-medical services as well as how and when they will receive the services. SCL CDO services include home and community support services and community day support services listed in the consumer's approved plan of care. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. This amendment also requires SCL providers' employees and volunteers to submit to a child abuse/neglect central registry check and a check of the nurse aide abuse registry, and not be listed on either registry for the purpose of employment or service as a volunteer. This amendment further establishes what types of documentation must be provided to the department in case of death of an SCL recipient.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the CDO program established by KRS 205.5606 for SCL recipients.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205.5606 by implementing the CDO program for SCL recipients.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by implementing CDO program for SCL recipients in accordance with KRS 205.5605 and 205 5606.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect any Medicaid SCL waiver recipient who opts to participate in the CDO program as well as any individual who chooses to be a CDO provider.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: SCL waiver recipients may opt to participate in the consumer directed option program. An individual who chooses to participate will be assisted by a support broker. Individuals who wish to provide consumer directed option services must meet basic requirements including: complete and submit a CDO provider agreement to the consumer's support broker, be at least 18 years old, pass a criminal background check, complete training identified by the consumer, report any suspected abuse, neglect or exploitation, demonstrate ability to safely attend to consumer, and be able to communicate effectively.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3) This amendment is required by KRS 205.5606 and does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An SCL waiver recipient who enrolls in the consumer directed option program will be able to choose their providers of non-medical services, in their approved plan of care, as well as how and when they will receive the services. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and nonmedical home and community based services and supports. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. CDO providers will be reimbursed for providing services to CDO consumers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid Program for nonresidential and non-medical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the DMS is unable to determine a precise fiscal impact at this time.

(b) On a continuing basis: Pursuant to KRS 205 5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and non-medical services for the consumer. Additionally, the DMS is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the DMS is unable to determine a precise fiscal impact at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an

increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: SCL providers, as a result of an amendment to this administrative regulation, will be required to obtain a child abuse/neglect central registry check for potential staff, volunteers, and for an annual sampling of staff. Central registry checks cost $10 per individual.

(9) Tiering: Is tiering applied? Consumer-directed option (CDO) providers are subject to less strict provider qualifications than non-CDO providers in order to enhance recipient access to services and to facilitate greater recipient independence among recipients in accordance with KRS 205.5606.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each SCL waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and 205.5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Amendment)

907 KAR 1:170. Reimbursement for home and community based waiver services.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A 050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method for determining amounts payable by the Medicaid Program for services provided by home and community based waiver service providers to an eligible recipient as an alternative to nursing facility care.

Section 1. Definitions. (1) "ADHC" means adult day health care.

(2) "ADHC center" means an adult day health care center that is:

(a) Licensed in accordance with 902 KAR 20:066, Section 4; and

(b) Certified for Medicaid participation by the department.

(3) "Cost report" means the Home Health and Home and Community Based Cost Report and the Home Health and Home and Community Based Cost Report Instructions.

(4) "DD" means developmentally disabled.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Fixed upper limit" means the maximum amount the department shall reimburse for a unit of service.

(7) "HCB" means home and community based waiver.

(8) "HCB recipient" means an individual who:

(a) Meets the criteria for a recipient as defined in KRS 205.8451; and

(b) Meets the criteria for HCB [~~waiver~~] services as established in 907 KAR 1:160.

[~~(8) "Home and community based waiver" or "HCB waiver" means home and community based waiver services.~~]

(9) "Level I" means a reimbursement rate of up to two (2) dollars and fifty-seven (57) [~~thirty (30) dollars and eighty (80)~~] cents paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient [~~HCB waiver~~].

(10) "Level II" means a reimbursement rate of up to three (3) dollars and twelve (12) [~~thirty-seven (37) dollars and forty (40)~~] cents paid to an ADHC center for a basic unit of service provided by the ADHC center to an individual designated as an HCB recipient [~~HCB waiver~~], if the ADHC center meets the criteria established in Sections 5 and 6 of this administrative regulation.

(11) "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(12) "Occupational therapist" is defined by KRS 319A.010(3)

(13) "Physical therapist" is defined by KRS 327.010(2).

(14) "Quality improvement organization" or "QIO" is defined in 42 C.F.R. 475.101.

(15) "Speech-language pathologist" is defined by KRS 334A.020(3)

Section 2. HCB Service Reimbursement. (1) Except as provided in Section 3 or 4 of this administrative regulation, the department shall reimburse for a home and community based waiver service provided in accordance with 907 KAR 1:160 at the lessor of billed charges or the fixed upper payment rate for each unit of service. The following rates shall be the fixed upper payment rate limits:

Home and Community Based Waiver Service	Fixed Upper Payment Rate Limit	Unit of Service
Assessment	$100.00	Entire assessment process
Reassessment	$100.00	Entire reassessment process
Case Management	$15.00	15 minutes
Homemaking	$13.00	30 minutes
Personal Care	$15.00	30 minutes
Attendant Care	$11.50	1 hour (not to exceed 45 hours per week)
Respite	$2,000 per 6 months (January 1	1 hour

	through June 30 and July 1 through December 31, not to exceed $4,000 per calendar year)	
Minor Home Adaptation	$500 per calendar year	

(2) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

(3) A homemaking service shall be limited to no more than four (4) units per week per HCB recipient.

Section 3. Local Health Department HCB Service Reimbursement. (1) The department shall reimburse a local health department for HCB services:

(a) Pursuant to Section 2 of this administrative regulation; and

(b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall submit a cost report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual cost report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

(a) Payments received for HCB services provided during a fiscal year; and

(b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual cost report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's cost report if it determines an audit is necessary. [~~Payment Amounts for HCB Waiver Covered Services Prior to July 1, 2001. (1) An HCB waiver provider providing services to an HCB recipient shall comply with the provisions established in 907 KAR 1:031 and 907 KAR 1:160.~~

~~(2) An HCB waiver provider shall be reimbursed in accordance with the reimbursement methodology established in 907 KAR 1:031 for the following HCB waiver services:~~

~~(a) Assessment;~~

~~(b) Reassessment;~~

~~(c) Case management;~~

~~(d) Homemaker; or~~

~~(e) Personal care.~~

~~(3) For a rate determined in accordance with the reimbursement methodology established in 907 KAR 1:031, the department shall apply a fixed upper limit which shall apply regardless of the length of time a provider has participated in the Medicaid Program.~~

~~(4) The fixed upper limit for an HCB waiver service shall be set:~~

~~(a) Using each HCB waiver provider's average unit cost per service which shall be:~~

~~1. Grouped by service, and~~

~~2. Arrayed from lowest to highest;~~

~~(b) Using the median per unit cost for each service array based on the median number of Medicaid units; and~~

~~(c) At 130 percent of the median cost per unit.~~

~~(5) The department shall:~~

~~(a) Use an HCB waiver provider's most recent cost report data available as of May 31 to determine the provider's rate for the next state fiscal year, which begins July 1;~~

~~(b) Update upper limits each July 1; and~~

~~(c) Except as provided in subsection (3) of this section, not apply upper limits until a provider has participated in the program for two (2) full agency fiscal years.~~

~~(6) If a provider fails to submit a cost report to the department before May 31, that provider's rates for HCB waiver services shall remain the same as those of the previous fiscal year, until receipt of an acceptable cost report.~~

~~(7) Payment for a covered respite service shall:~~

~~(a) Be limited to $2,000 per six (6) month period within a calendar year beginning January 1 through June 30 and July 1 through December 31;~~

~~(b) Not exceed $4,000 per calendar year for a period beginning January 1 through December 31;~~

~~(c) Be subject to a year-end cost settlement by the department:~~

~~1. To actual cost up to $4,000, or~~

~~2. To charges, if lower; and~~

~~(d) Be made upon receipt of a claim to the department by an HCB waiver provider pursuant to 907 KAR 1:673.~~

~~(8) Payment for a minor home adaptation to an HCB recipient's home shall:~~

~~(a) Be made on the basis of actual billed charges;~~

~~(b) Be for the actual cost of the minor home adaptation, including actual overhead cost which shall not exceed twenty (20) percent of actual cost;~~

~~(c) Not exceed a maximum of $500 per calendar year per HCB recipient beginning January 1; and~~

~~(d) Be subject to a year-end cost settlement by the department:~~

~~1. To actual cost up to $500; or~~

~~2. To charges, if lower.~~

~~(9) An attendant care service shall:~~

~~(a) Be reimbursed on a fee-for-service basis at the lower of reasonable cost or charge not to exceed the Medicaid upper limit of eleven (11) dollars and fifty (50) cents per unit of service;~~

~~(b) Be reported as nonreimbursable cost in an HCB waiver provider's cost report; and~~

~~(c) Not be subject to year-end cost settlement.~~

~~(10) Attendant care shall be limited to forty-five (45) hours per week and travel time for an attendant shall not be included in a unit of service.~~

~~Section 3. Audits of HCB Waiver Providers. HCB waiver cost reports shall be audited:~~

~~(1) As deemed necessary by the department; and~~

~~(2) To ensure that final payment to a provider is made in accordance with 907 KAR 1:031.~~]

Section 4. Reimbursement for an ADHC Service. (1) Reimbursement shall:

(a) Be made:

1. Directly to an ADHC center; and

2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 120 [~~ten (10)~~] units per calendar week at each HCB recipient's initial review or recertification.

(2) Level I reimbursement shall be the lesser of the provider's usual and customary charges or two (2) dollars and fifty-seven (57) [~~thirty (30) dollars and eighty (80)~~] cents per unit of service.

(3) Level II reimbursement shall be the lesser of the provider's usual and customary charges or three (3) dollars and twelve (12) [~~thirty-seven dollars and forty (40)~~] cents per unit of service.

(4) The department shall not reimburse an ADHC center for more than twenty-four (24) [~~two (2)~~] basic units of service per day per HCB recipient.

(5) An ADHC basic daily service shall:

(a) Constitute care for one (1) HCB recipient; and

(b) Not exceed twenty-four (24) units per day.

(6) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.

(7) [~~(b) Be a minimum of:~~

~~1. Three (3) hours per day for one (1) unit; or~~

~~2. Two (2) hours for one (1) unit if the HCB recipient has occupied the ADHC center for two (2) hours prior to leaving the center due to a documented illness or emergency;~~

~~(c) Be a minimum of six (6) hours for two (2) units; and~~

~~(d) Not exceed two (2) units per day.~~

~~(6)~~] An ADHC center may request a Level II reimbursement rate for an HCB recipient if the ADHC center meets the following criteria

(a) The ADHC center has an average daily census limited to individuals designated as:

1. HCB recipients [~~waiver~~];
2. Private pay; or
3. Covered by insurance; and

(b) The ADHC center has a minimum of eighty (80) percent of its individuals meeting the requirements for DD as established in Section 5(2) of this administrative regulation.

(8) [~~(7)~~] If an ADHC center does not meet the Level II requirements established in Section 5 of this administrative regulation, the ADHC center shall be reimbursed at a Level I payment rate for the quarter for which the ADHC center requested Level II reimbursement.

(9) [~~(8)~~] To qualify for Level II reimbursement, an ADHC center that was not a Medicaid provider before July 1, 2000 shall:

(a) Have an average daily census of at least twenty (20) individuals who meet the criteria established in subsection (7)[~~(6)~~](a) of this section; and

(b) Have a minimum of eighty (80) percent of its individuals meet the definition of DD as established in Section 5(2) of this administrative regulation.

(10) [~~(9)~~] To qualify for reimbursement as an ancillary therapy, a service shall be:

(a) Medically necessary;
(b) Ordered by a physician; and
(c) Limited to:

1. Physical therapy provided by a physical therapist [~~as defined in 907 KAR 1:160, Section 1(18)~~];
2. Occupational therapy provided by an occupational therapist [~~as defined in 907 KAR 1:160, Section 1(17)~~]; or
3. Speech therapy provided by a speech-language [~~speech~~] pathologist [~~as defined in 907 KAR 1:160, Section 1(23)~~].

(11) [~~(10)~~] Ancillary therapy service reimbursement shall be:

(a) Per HCB recipient per encounter; and

(b) The usual and customary charges not to exceed the Medicaid upper limit of seventy-five (75) dollars per encounter per HCB recipient.

(12) [~~(11)~~] A respite service shall:

(a) Be provided on site in an ADHC center; and
(b) Be provided pursuant to 907 KAR 1:160.

(13) [~~(12)~~] One (1) respite service unit shall equal one (1) hour to one (1) hour and fifty-nine (59) minutes.

(14) [~~(13)~~] The length of time an HCB recipient receives a respite service shall be documented.

(15) [~~(14)~~] A covered respite service shall be reimbursed as established in Section 7 of this administrative regulation.

Section 5. Criteria for DD ADHC Level II Reimbursement. To qualify for Level II reimbursement:

(1) An ADHC center shall meet the requirements established in Section 4 of this administrative regulation; and

(2) Eighty (80) percent of its ADHC service individuals shall have:

(a) A substantial disability that shall have manifested itself before the individual reaches twenty-two (22) years of age;

(b) A disability that is attributable to mental retardation or a related condition which shall include:

1. Cerebral palsy;
2. Epilepsy;
3. Autism; or
4. A neurological condition that results in impairment of general intellectual functioning or adaptive behavior, such as mental retardation, which significantly limits the individual in two (2) or more of the following skill areas:

a. Communication;
b. Self-care;
c. Home-living;
d. Social skills;
e. Community use;
f. Self direction;
g. Health and safety;
h. Functional academics;
i. Leisure; or
j. Work; and

(c) An adaptive behavior limitation similar to that of a person with mental retardation, including:

1. A limitation that directly results from or is significantly influenced by substantial cognitive deficits; and
2. A limitation that may not be attributable to only a physical or sensory impairment or mental illness.

Section 6. The Assessment Process for Level II ADHC Reimbursement. (1) To apply for Level II ADHC reimbursement, an ADHC center shall contact the QIO on the first of the month prior to the end of the current calendar quarter. If the first of the month is on a weekend or holiday, the ADHC center shall contact the QIO the next business day.

(2) The QIO shall be responsible for randomly determining the date each quarter for conducting a Level II assessment of an ADHC center.

(3) In order for an ADHC center to receive Level II reimbursement:

(a) An ADHC center shall:

1. Document on a MAP-1021 form that it meets the Level II reimbursement criteria established in Section 5 of this administrative regulation;
2. Submit the completed MAP-1021 form to the QIO via facsimile or mail no later than ten (10) working days prior to the end of the current calendar quarter in order to be approved for Level II reimbursement for the following calendar quarter; and
3. Attach to the MAP-1021 form a completed and signed copy of the "Adult Day Health Care Attending Physician Statement" for each individual listed on the MAP-1021 form;

(b) The QIO shall review the MAP-1021 form submitted by the ADHC center and determine if the ADHC center qualifies for Level II reimbursement; and

(c) The department shall review a sample of the ADHC center's Level II assessments and validate the QIO's determination.

(4) If the department invalidates an ADHC center Level II reimbursement assessment, the department shall:

(a) Reduce the ADHC center's current rate to the Level I rate; and

(b) Recoup any overpayment made to the ADHC center.

(5) If an ADHC center disagrees with an invalidation of a Level II reimbursement determination, the ADHC center may appeal in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 7. [~~Fixed Upper Payment Rate Limits. (1) Except as provided in Section 4 of this administrative regulation, the payment rate for a home and community based waiver service provided in accordance with 907 KAR 1:160 shall be the lesser of billed charges or the fixed upper payment rate for each unit of service. The following rates shall be the fixed upper payment rate limits:~~]

[~~Home and Community Based Waiver Service~~	~~Fixed Upper Payment Rate Limit~~	~~Unit of Service~~
~~Assessment~~	~~$75.00~~	~~Entire assessment process~~
~~Reassessment~~	~~$75.00~~	~~Entire reassessment process~~
~~Case Management~~	~~$15.00~~	~~15 minutes~~
~~Homemaking~~	~~$13.00~~	~~30 minutes~~
~~Personal Care~~	~~$15.00~~	~~30 minutes~~
~~Attendant Care~~	~~$11.50~~	~~1 hour (not to exceed 45 hours per week)~~
~~Respite~~	~~$2,000 per 6 months (January 1 through June 30 and July 1 through December 31, not to exceed $4,000 per calendar year)~~	~~1 hour~~]
~~Minor Home Adap-~~	~~$500 per calendar~~	

~~tation~~	~~year~~	

~~[(2) The services listed in subsection (1) of this section shall not be subject to cost settlement by the department.~~

~~(3) A homemaking service shall be limited to no more than four (4) units per week per HCB recipient.~~

~~Section 8.~~] Appeal Rights. An HCB service [~~waiver~~] provider may appeal a department decision [~~decisions~~] as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1.671, Sections 8 and 9.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Map-1021, ADHC Payment Determination Form", August 2000 Edition;

(b) "Adult Day Health Care Attending Physician Statement", August 2000 Edition;

(c) "The Home Health and Home and Community Based Cost Report", May 1991 Edition; and

(d) "The Home Health and Home and Community Based Cost Report Instructions", October 1999 Edition.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 2, 2007

FILED WITH LRC: July 12, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to home and community based (HCB) waiver service reimbursement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to home and community based (HCB) waiver service reimbursement.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing provisions related to home and community based (HCB) waiver service reimbursement

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to home and community based (HCB) waiver service reimbursement.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes that reimbursement for HCB providers who are local health departments shall be cost-based in addition to the already established fee-for-service basis as well as increases HCB assessment and reassessment reimbursement from 75 dollars to 100 dollars. Local health department HCB providers shall receive a cost settlement if the fee schedule reimbursement resulted in payments equaling less than the entity's cost for the year. Conversely, if their reimbursement for the year exceeds cost, the Department for Medicaid Services (DMS) shall recoup any such excess. DMS employs this same practice with local health departments that provide home health care. Additionally, adult day health care (ADHC) unit length is revised to capture more accurate or detailed amounts of time.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure HCB recipient access to services by strengthening local health department participation. Currently the Department for Medicaid Services (DMS) employs this same practice with local health departments that provide home health care. HCB assessment and reassessment reimbursement must be increased in order to ensure an adequate supply of providers to serve the HCB community. Additionally, adult day health care (ADHC) unit length is revised to capture more accurate or detailed amounts of time.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that local health department reimbursement for HCB services rendered shall equal cost and by ensuring an adequate supply of HCB providers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that local health department reimbursement for HCB services rendered shall equal cost and by ensuring that local health department reimbursement for HCB services rendered shall equal cost and by ensuring an adequate supply of HCB providers.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect local health departments providing HCB services and HCB providers who perform assessments or reassessments.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. The amendment alters reimbursement for local health departments and for HCB providers who perform assessments or reassessments. Local health departments must submit a cost report in order to receive cost-based reimbursement; however, they already submit cost reports to identify home health care delivered as opposed to home and community based service care. Therefore, the department foresees no additional administrative burden. HCB providers who perform assessments or reassessments are not required to take any action to receive the increased reimbursement. ADHC service providers will be able to capture more accurate or detailed amounts of time when billing for services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment does not impose a cost on regulated entities. ADHC service providers will be able to capture more accurate or detailed amounts of time when billing for services.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Local health department reimbursement will equal cost as opposed to the current methodology which may result in reimbursement falling short of cost, and HCB providers who perform assessments or reassessments will receive an increased reimbursement for those services. ADHC service providers will be able to capture more accurate or detailed amounts of time when billing for services.

(5) Provide an estimate of how much it will cost to implement

this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision. DMS projects the unit length amendment to be budget neutral.

(b) On a continuing basis: DMS anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision. DMS projects the unit length amendment to be budget neutral.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes that reimbursement for HCB providers that are local health departments shall be cost-based in addition to the already established fee-for-service basis; thus, if at fiscal year end a local health department's cost has exceeded its HCB fee-for-service reimbursement the local health department shall reimburse the department for the difference.

(9) Tiering: Is tiering applied? Tiering is applied in that only local health department HCB reimbursement shall be cost-based. Local health departments provide a critical safety net of HCB services and are reimbursed on a cost basis in the home health program as well. This action is necessary to ensure recipient access to HCB services.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect local health departments that provide HCB service and HCB providers who perform assessments or reassessments.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by KRS 194A.030(2), 194A.050(1) and 205.520(3).

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates that the amendment will increase local health department revenues; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years. DMS anticipates that the amendment will increase local health department revenues; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): DMS anticipates that the amendment will increase local health department revenues; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

Expenditures (+/-): DMS anticipates that the increased assessment and reassessment rates will cost approximately $350,000 ($245,000 federal funds and $105,000 state funds) annually. DMS expects local health department cost settling will increase departmental expenditures; however, by what amount is indeterminable and contingent upon recipient utilization of local health department HCB service provision.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amendment)

907 KAR 1:672. Provider enrollment, disclosure, and documentation for Medicaid participation.

RELATES TO: KRS 205.520, 205.8451(2),(7),(8),(9), 205.8477, 304.17A-545(5), 311.621-311.643, 42 U.S.C. 1396a(w), 42 C.F.R. 455.100-455.106, Ky. Acts ch. 34

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(12), 42 U.S.C. 1396a, b, c[, ~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes [~~empowers~~] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. KRS 205.560(12) requires the Medical Assistance Program to use the form and guidelines established pursuant to KRS 304.17A-545(5) for assessing the credentials of those applying for participation in the Medical Assistance Program. Ky. Acts ch. 34 (SB 98 2007 GA) requires the department to develop a specific form and establish guidelines for assessing the credentials of dentists applying for participation in the Medical Assistance Program. The administrative regulation establishes provisions related [~~sets forth the provisions relating~~] to Medicaid provider enrollment, disclosure, [~~and~~] documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

Section 1. Definitions. (1) "Applicant" means a person or entity who applies for enrollment as a participating [~~submits an application to become a~~] Medicaid provider.

(2) [~~"Application" means the completion and submission of a Medicaid provider agreement and any required addendum specific~~

~~to a provider type, which is the contract between the provider and the department for the provision of Medicaid services.~~

~~(3)~~] "Cabinet" means the Cabinet for Health and Family Services.

(3) [~~(4)~~] "Claim" means a [~~any~~] request for payment under the Medicaid Program that:

(a) Relates to each individual billing submitted by a provider to the department;

(b) [~~which~~] Details services rendered to a recipient on a specific date; and

(c) [~~date(s) The claim~~] May be [~~either~~] a line item of service or all services for one (1) recipient on a bill.

(4) "Credentialed provider" means a provider that is required to complete the credentialing process in accordance with KRS 205.560(12) and Ky. Acts ch. 34 and includes the following individuals who apply for enrollment in the Medicaid Program:

(a) A dentist;

(b) A physician;

(c) An audiologist;

(d) A certified registered nurse anesthetist;

(e) An optometrist;

(f) An advance registered nurse practitioner;

(g) A podiatrist;

(h) A chiropractor; or

(i) A physician assistant.

(5) "Department" means the Department for Medicaid Services or its designated agent [~~and its designated agents~~].

(6) [~~"Disclosing entity" means a Medicaid provider or the fiscal agent for the department.~~

~~(7)~~] "Disclosure" means the provision of information required by 42 C.F.R. 455.100 through 455.106 [~~in accordance with the requirements shown in 42 C.F.R. 455, Subpart B~~].

(7)[~~(8)~~] "Exclusion" means the termination of a provider's participation in the Medicaid Program or the denial of a provider's enrollment in the Medicaid Program.

(8) "Evaluation" or "credentialing" means:

(a) A process for collecting and verifying professional qualifications of a health care provider;

(b) An assessment of whether a health care provider meets specified criteria relating to professional competence and conduct; and

(c) A process to be completed before a health care provider may participate in the Medicaid Program on an initial or ongoing basis.

(9) "Furnish" means to provide medical care, services, or supplies that are:

(a) Provided directly by a provider;

(b) Provided under the supervision of a provider; or

(c) Prescribed by a provider.

(10) "Managing employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over or conducts the day-to-day operation of an institution, entity, organization, or agency.

(11) "Medically necessary" or "medical necessity" means a covered benefit is:

(a) Reasonable and required to identify, diagnose, treat, correct, cure, palliate, or prevent a disease, illness, injury, disability, or other medical condition, including pregnancy;

(b) Appropriate in terms of the service, amount, scope, and duration based on generally accepted standards of good medical practice;

(c) Provided for medical reasons rather than primarily for the convenience of the individual, the individual's caregiver, or the health care provider, or for cosmetic reasons;

(d) Provided in the most appropriate location, with regard to generally accepted standards of good medical practice, where the service may, for practical purposes, be safely and effectively provided;

(e) Needed, if used in reference to an emergency medical service, to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard;

(f) Provided in accordance with Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements established in 42 U.S.C. 1396d(r) and 42 C.F.R. Part 441 Subpart B for individuals under twenty-one (21) years of age; and

(g) Provided in accordance with 42 C.F.R. 440.230.

(12) "Noncredentialed provider" means a provider that is not required to complete the credentialing process in accordance with KRS 205.560(12) and includes any individual or entity not identified in subsection (4) of this section.

(13) "Provider" is defined by KRS 205.8451(7).

(14) "Recipient" is defined by KRS 205.8451(9).

(15) "Reevaluation" or "recredentialing" means a process for identifying a change that may have occurred in a health care provider since the last evaluation or credentialing that may affect the health care provider's ability to perform services.

(16) [~~as defined in 907 KAR 1:671.~~

~~(9) "Fiscal agent" means a contractor that processes or pays provider claims on behalf of the department.~~

~~(10) "Furnish" means as defined in 907 KAR 1:671.~~

~~(11) "Managing employee" means as defined in 907 KAR 1:671.~~

~~(12) "Provider" means as defined by KRS 205.8451.~~

~~(13) "Recipient" means as defined by KRS 205.8451.~~

~~(14)~~] "Services" means medical care, services, or supplies provided to a Medicaid recipient [~~recipients~~].

(17) "Subcontractor" means an individual, agency, entity, or organization to which a Medicaid provider or the department's fiscal agent has:

(a) Contracted or delegated some of its management functions or responsibilities of providing medical care or services to its patients; or

(b) Entered into a contract, agreement, purchase order, or lease, including lease of real property, to obtain space, supplies, equipment, or nonmedical services associated with providing services and supplies that are covered under the Medicaid Program.

(18) "Terminated" means a provider's participation in the Medicaid Program has ended and a contractual relationship no longer exists between the provider and the department for the provision of Medicaid-covered services to eligible recipients by the provider or its subcontractor.

(19) "Unacceptable practice" means conduct by a provider which constitutes "fraud" or "provider abuse", as defined in KRS 205.8451(2) or (8), or willful misrepresentation, and includes the following practices:

(a) Knowingly submitting, or causing the submission of false claims, or inducing, or seeking to induce, a person to submit false claims;

(b) Knowingly making, or causing to be made, or inducing, or seeking to induce, a false, fictitious or fraudulent statement or misrepresentation of material fact in claiming a Medicaid payment, or for use in determining the right to payment;

(c) Having knowledge of an event that affects the right of a provider to receive payment and concealing or failing to disclose the event or other material omission with the intention that a payment be made or the payment is made in a greater amount than otherwise owed;

(d) Conversion;

(e) Soliciting or accepting bribes or kickbacks;

(f) Failing to maintain or to make available, for purposes of audit or investigation, administrative and medical records necessary to fully disclose the medical necessity for the nature and extent of the medical care, services and supplies furnished, or to comply with other requirements established in 907 KAR 1:673, Section 2;

(g) Knowingly submitting a claim or accepting payment for medical care, services, or supplies furnished by a provider who has been terminated or excluded from the program;

(h) Seeking or accepting additional payments, for example, gifts, money, donations, or other consideration, in addition to the amount paid or payable under the Medicaid Program for covered medical care, services, or supplies for which a claim is made;

(i) Charging or agreeing to charge or collect a fee from a recipient for covered services which is in addition to amounts paid by the Medicaid Program, except for required copayments or recipient liability, if any, required by the Medicaid Program;

(j) Engaging in conspiracy, complicity, or criminal syndication;

(k) Furnishing medical care, services, or supplies that fail to

meet professionally recognized standards, or which are found to be noncompliant with licensure standards promulgated under KRS Chapter 216B and failing to correct the deficiencies or violation as reported to the department by the Office of Inspector General, for health care or which are beyond the scope of the provider's professional qualifications or licensure;

(l) Discriminating in the furnishing of medical care, services, or supplies as prohibited by 42 U.S.C. 2000d;

(m) Having payments made to or through a factor, either directly or by power of attorney, as prohibited by 42 C.F.R. 447.10;

(n) Offering or providing a premium or inducement to a recipient in return for the recipient's patronage of the provider or other provider to receive medical care, services or supplies under the Medicaid Program;

(o) Knowingly failing to meet disclosure requirements;

(p) Unbundling; or

(q) An act committed by a nonprovider on behalf of a provider which, if committed by a provider, would result in the termination of the provider's enrollment in the program.

~~[(15) "Subcontractor" means as defined in 907 KAR 1:671.~~

~~(16) "Terminated" means as defined in 907 KAR 1:671.~~

~~(17) "Unacceptable practice(s)" means as defined in 907 KAR 1:671.]~~

Section 2. Enrollment Process for Provider Participation in Medicaid. (1) Scope.

(a) The department shall contract only with an individual or entity capable of demonstrating its ability to meet the conditions of Medicaid provider participation [~~only those providers or entities who can demonstrate that they are qualified~~] in accordance with 907 KAR 1:671 [~~as determined by the department to participate as a provider~~].

(b) The department reserves the right to contract or not contract with any potential provider.

(c) An individual or entity that wishes to participate:

1. [~~(b) All providers or entities who wish to participate~~] in the Medicaid Program shall be enrolled as a participating provider [~~participating providers~~] prior to being eligible to receive reimbursement in accordance with federal and state laws; and

2. As a KenPAC primary care provider shall meet the provider participation criteria set forth in 907 KAR 1:320, Kentucky Patient Access and Care System (KenPAC).

(2) To apply for enrollment in the Medicaid Program as a noncredentialed provider, an individual or entity shall submit:

(a) A completed MAP-811, Non-Credentialed Provider Application; and

(b) Proof of a valid professional license, registration, or certificate that allows the:

1. Individual to provide services within the individual's scope of practice; or

2. Entity to operate or provide services within the entity's scope of practice.

(3) To apply for enrollment in the Medicaid Program as a credentialed provider, an individual shall submit:

(a) A completed MAP-811, Individual Provider Application;

(b) Proof of a valid professional license, registration, or certificate that allows the individual to provide services within the individual's scope of practice; and

(c)1. Except for a dentist, a completed KAPER-1, Kentucky Application for Provider Evaluation and Re-evaluation; and

2. If licensed to practice as a dentist, a completed Dental Credentialing Form; or

3. Pursuant to 806 KAR 17:480, Section 2(4), and in lieu of the KAPER-1, the provider application form of the Council for Affordable Quality Healthcare.

(4)(a) [~~New enrollments. Any provider or entity interested in participating as a Medicaid provider shall be required to submit an application for enrollment in accordance with this section.~~

~~(3) Enrolled providers. Upon receiving notice from the department, all existing providers or entities enrolled as participating providers in the Medicaid Program shall be required to submit a new or revised application for enrollment to continue their Medicaid participation.~~

~~(a) Providers shall have thirty-five (35) days from the date of the notice to submit a completed and signed application to the department.~~

~~(b) The notice shall inform the provider that failure to return the completed and signed application within thirty-five (35) days from the date of the notice shall result in termination of participation.~~

~~(c) Submission of the application within thirty-five (35) days from the date of the notice shall permit the continuation of the existing provider participation until the application for enrollment the Medicaid Program has been approved or denied and notice has been sent to the provider.~~

~~(d) The department may revise enrollment requirements by regulatory revision made in accordance with the requirements of KRS Chapter 13A and reenroll providers, if necessary, for effective management of the Medicaid Program.~~

~~(4) Application for enrollment as a participating provider shall be processed in the following manner:~~

~~(a) All applicants for participation shall complete and sign a provider agreement, disclosure of ownership and control interest statement, certification with regard to lobbying activity, pursuant to 31 U.S.C. 1352, provide proof of a valid professional license, registration, or certificate which allows the applicant to provide the services for which the applicant contracts, and provide any additional clarifying information requested for processing of the application.~~

~~(b)~~] The department may require [~~any~~] additional clarifying information from an individual or entity that applies for enrollment in the Medicaid Program as a participating provider [~~the applicant with regard to qualifications for participation~~].

(b) If the applicant does not respond within the time period specified in the department's request for additional clarifying information, the department may deny enrollment [~~application for participation may be denied~~] unless an extension of time is requested by the provider and granted by the department.

(c) The department may require that an on-site inspection be performed to ascertain compliance with applicable licensure standards established in [~~as promulgated under~~] KRS Chapter 216B, and certification standards, prior to an enrollment determination.

(d)1. The department shall [~~complete its application review and~~] make an enrollment determination within ninety (90) days of [~~after~~] receipt of:

a. The completed application documents described in subsection (2) or (3) of this section; and

b. Any additional information requested by the department.

2. The department may take additional time beyond ninety (90) days to render a decision if [~~for the decision when~~] necessary for resolution of an issue or dispute [~~issues or disputes~~].

3. If additional time is needed to render a decision, the department shall notify the applicant that a decision will be issued after the ninety (90) day timeframe described in subparagraph 1. [~~However, notice shall be sent to the applicant in those matters requiring additional time to process.~~]

(5) Approval of enrollment in the Medicaid Program as a participating provider [~~an application~~].

(a) Upon approval of enrollment, the department shall issue a provider number that shall be used by the provider solely [~~an application, the provider shall be issued an identifying number, known as a provider number, which shall be used exclusively by the provider~~] for billing and identification purposes.

(b) A provider's participation shall begin and end on the dates specified in the notification of approval for [~~of~~] program participation, unless the provider's [~~provider~~] participation is [~~otherwise~~] terminated in accordance with this administrative regulation, 907 KAR 1:671, or other applicable state or federal laws.

(6) By enrolling in the Medicaid Program, a provider, the provider's [~~, the provider, its~~] officers, directors, agents, employees, and subcontractors agree to:

(a) Maintain the documentation for claims as required by Section 4 of this administrative regulation;

(b) Provide [~~Furnish~~], upon request, all information regarding the nature and extent of services and claims [~~for payment~~] submitted by, or on behalf of[,] the provider, to the:

1. [~~The~~] Cabinet; [~~for Health and Family Services,~~]

2. [~~The~~] Department;

3. [~~The~~] Attorney General;

4. [~~The~~] Auditor of Public Accounts;

5. [The] Secretary of the United States Department of Health and Human Services; or [and]

6. [The] Office of the United States Attorney;

(c) Comply with the disclosure requirements established in [of] Section 3 of this administrative regulation;

(d) Comply with the applicable advance directive [directives] requirements established in [of] 42 U.S.C. 1396a(w) regarding [with regard to] the right to accept or reject life-saving medical procedures as described in KRS 311.621 - 311.643 [et seq];

(e) Accept payment from Medicaid as payment in full for all care, services, benefits, or [and] and supplies billed to the Medicaid Program, except with regard to recipient cost-sharing charges [copayments] and beneficiary liability, if any;

(f) Submit claims for payment only for care, services, benefits, or [and] supplies;

1. Actually furnished to eligible recipients; [beneficiaries] and

2. Medically necessary or otherwise authorized by law;

(g) Provide true, accurate, and complete information in relation to any claim for payment;

(h)1. Permit review or audit of all books or records or, at the discretion of the auditing agency, a sample of books or records related [thereof, relating] to services furnished and payments received from [under] Medicaid, including recipient histories, case files, and recipient specific data [as listed below].

2. Failure to allow access to records may result in the provider's liability for costs incurred by the cabinet associated with the review of records, including food, lodging and mileage;[.]

(i) Not engage in any activity that [which] would constitute an unacceptable practice;

(j) Comply with all terms and provisions contained in the application documents described in subsection (2) or (3) of this section; [provider agreement, and]

(k) Comply with all applicable federal laws, [and] state statutes, and state administrative regulations related to the applicant's [relating to their] provider type and provision of services under the Medicaid Program; and

(l) Bill third party payors in accordance with Medicaid statutes and administrative regulations.

(7) Denial of enrollment or reenrollment in the Medicaid Program [an application for participation].

(a) The department shall deny enrollment if an applicant meets one (1) of the following conditions [Reasons for denial of application for participation shall include the following factors]:

1. Falsely represents, omits, or fails [Any false representation, omission, or failure] to disclose of any material fact in making an application for enrollments in accordance with subsection (2) or (3) of this section;

2. Is currently suspended, excluded, terminated, or involuntarily withdrawn from participation [Any suspension, exclusion, termination, or involuntary withdrawal from participation currently in effect] in any governmental medical insurance program as a result of fraud or abuse of that program;

3. Falsely represents, omits, or fails to disclose any material of fact in making [Any false representation or omission of] an application for a [any] license, permit, certificate, or registration related to a health care profession or business;

4. Has failed [Any previous failure] to comply with applicable standards in the operation of a health care business or enterprise after having received written notice of noncompliance from:

a. The department; or

b. A state or federal licensing, certifying, or auditing agency;

5. Is under [A] current investigation, indictment or conviction for fraud and abuse or unacceptable practice in:

a. The Kentucky Medicaid Program;

b. Another state's Medicaid Program;

c. [in Kentucky or any other state,] The Medicare Program,[;] or

d. [any] Other publicly funded health care program;

6. Fails [Failure] to comply with any Medicaid policy as specified in the Kentucky statutes or department's administrative regulations; [of the department; or]

7. Fails [Failure] to pay any outstanding debt owed to the department; or

8. Has engaged in an activity that would constitute an unacceptable practice

(b) If enrollment or reenrollment [an application] is denied, the department shall consider reapplication only:

1. If the applicant corrects each deficiency that led to the denial; and

2. After the expiration of a period of exclusion imposed in accordance with 907 KAR 1:671, if applicable [applicant may resubmit only upon correction of the factors leading to its denial, and after the expiration of any period of exclusion imposed in accordance with 907 KAR 1:671.]

(c) Notice of denial of enrollment or reenrollment The department shall send [A] written notice of [the] denial to an [shall be mailed to the] applicant's last known address and provide [contain the following:

1.] the reason for the denial [, and

2. The date in which the applicant may reapply for enrollment.]

(d) The denial shall be effective upon the date of the written notice.

(8)1. A provider may request limited enrollment for a period of time, not to exceed thirty (30) days, in an exceptional situation for emergency services provided to an eligible recipient [beneficiary].

2. The department shall make an enrollment determination regarding [of] the exceptional circumstances and notify the provider in writing of its decision.

(9) Recredentialing. A credentialed provider currently enrolled in the Medicaid Program shall submit to the department's recredentialing process three (3) years from the date of the provider's initial evaluation or last reevaluation.

Section 3. Required Provider Disclosure. (1) A provider [Providers and the fiscal agent] shall comply with the disclosure of information requirements contained in 42 C.F.R. 455.100 through 455.106 [455 Subpart B] and KRS 205.8477.

(2) Time and manner of disclosure. Information disclosed in accordance with 42 C.F.R. 455.100 through 455.106 [(a) The required provider information specified in 42 C.F.R. 455, Subpart B] shall be provided:

(a) [1.] Upon application for enrollment;

(b) [2.] Annually thereafter; and

(c) [3.] Within thirty-five (35) days of a written [the] request by the department or the United States Department of Health and Human Services.

[(b) The disclosure requirement may coincide with the certification or recertification periods except when the provider is certified other than on an annual basis.]

(3) If a [the] provider [or fiscal agent] fails to disclose [required] information required by 42 C.F.R. 455.100 through 455.106 within thirty-five (35) days of the department's written request [the time period specified], the department shall terminate the provider's [provider shall be terminated from] participation in the Medicaid Program in accordance with 907 KAR 1:671, Section 6 on the day following the last day for submittal of the required information [in accordance with 907 KAR 1:671].

(4)(a) A [The] provider shall file an amended, signed ownership and disclosure form with the department within thirty-five (35) days following a change in [from the change in the following]:

1. [(a)] Ownership or control;

2. [(b)] The managing employee or management company; or

3. [(c)] A provider's federal tax identification number.

(b) [(5)] Failure to comply with the requirements of paragraph (a) of this subsection may result in termination from the Medicaid Program.

Section 4. Required Provider Documentation. (1) A [Each] provider shall maintain documentation of:

(a) Care, services, benefits, or supplies provided to an eligible recipient [beneficiary];

(b) The recipient's medical record or other provider file, as appropriate, which shall demonstrate that the care, services, benefits, or supplies [billed] for which the provider submitted a claim[,] were actually performed or delivered;

(c) The diagnostic condition necessitating the service performed or supplies provided; and

(d) Medical necessity as substantiated by appropriate documentation including an appropriate medical order.

(2) A provider who is reimbursed using a cost-based method shall maintain all

(a) Fiscal and statistical records and reports [~~which are~~] used for the purpose of establishing rates of payment made in accordance with Medicaid policy;[,] and

(b) [all] Underlying books, records, documentation and reports that [~~which~~] formed the basis for the fiscal and statistical records and reports.

(3) All documentation required by this section shall be maintained by the provider for a minimum of five (5) years from the latter of:

(a) The date of final payment for services;

(b) The date of final cost settlement for cost reports; or

(c) The date of final resolution of disputes, if any.

(4) If any litigation, claim, negotiation, audit, investigation, or other action involving the records [~~has been~~] started before [~~the~~] expiration of the five (5) year retention period, the records shall be retained until the latter of:

(a) The completion of the action and resolution of all issues which arise from it; or

(b) The end of the regular five (5) year period.

Section 5. Incorporation by Reference. The following material is incorporated by reference:

(1) "Kentucky Application for Provider Evaluation and Re-evaluation, Form KAPER-1", December 2005 edition.

(2) "MAP-811, Non-credentialed Provider Application", July 2007 edition.

(3) "MAP-811, Individual Provider Application", July 2007 edition.

(4) "Dental Credentialing Form", July 2007 edition.

(5) The material incorporated by reference may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

GLENN JENNINGS, Commissioner
MARK BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 2, 2007

FILED WITH LRC: July 12, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Please send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing provisions related to Medicaid provider enrollment, disclosure, documentation requirements, and guidelines for assessing the credentials of those applying for participation in the Medicaid Program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Pursuant to KRS 205.560(12), this amendment implements use of the form and guidelines required by KRS 304.17A-545(5) and 806 KAR 17:480 for assessing the credentials of those applying for participation in the Medicaid program. Pursuant to Ky. Acts ch. 34 (SB 98 2007 GA), this amendment establishes a specific form for assessing the credentials of dentists applying for participation in the Medicaid program.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with KRS 205.560(12), 304.17A-545(5), and 806 KAR 17:480 in recognizing a uniform provider credentialing and application process. This amendment is also required by Ky. Acts Chapter 34 (SB 98 2007 GA) to establish a specific form for assessing the credentials of dentists applying for participation in the Medicaid program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by complying with KRS 205.560(12), 304.17A-545(5), 806 KAR 17:480, and Ky. Acts ch. 34 (SB 98 2007 GA) in recognizing a uniform provider credentialing and application process.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by complying with KRS 205.560(12), 304.17A-545(5), 806 KAR 17:480, and Ky. Acts ch. 34 (SB 98 2007 GA) in recognizing a uniform provider credentialing and application process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any entity desiring to be a Medicaid provider will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Entities applying for enrollment as a Medicaid provider shall be required to submit a KAPER-1 form in addition to a MAP-811. Dentists applying for participation as a Medicaid provider shall be required to submit a "Dental Credentialing" form in addition to a MAP-811.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): An entity that applies for enrollment as a Medicaid provider would experience no significant costs associated with completing the required KAPER-1 or Dental Credentialing form.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Entities that comply with this amendment will be eligible to receive Medicaid reimbursement if approved as participating providers. In addition, because this amendment complies with the provisions of SB 98 2007 GA, dentists benefit from the Cabinet's development of the new "Dental Credentialing Form", a form used in lieu of the KAPER-1 to streamline the process for assessing the credentials of dentists.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates no fiscal impact as a result of the amendment to this administrative regulation.

(b) On a continuing basis: DMS anticipates no fiscal impact as a result of the amendment to this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under Title XIX of the Social Security Act and state matching funds from general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish any fees and it does not directly or indirectly increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each applicant for participation as a credentialed provider in the Medicaid Program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205 560(12), which provides that the Medicaid program use the form and guidelines established by KRS 304.17A-545(5) and 806 KAR 17:480 for assessing the credentials of those applying for participation in the Medicaid program. This amendment is further required by Ky. Acts Chapter 34 (SB 98 2007 GA) which requires that the Medicaid program develop a specific form and guidelines for assessing the credentials of dentists applying for participation in the Medicaid program.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? Implementation of this amendment will not result in any additional costs during the first year.

(d) How much will it cost to administer this program for subsequent years? Implementation of this amendment will not result in any additional costs during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amendment)

907 KAR 3:005. Physicians' services.

RELATES TO: KRS 205.520, 205.560, 42 C.F.R. 415.152, 415.174, 415.184, 440.50, 45 C.F.R. 160, 164, 42 U.S.C. 1320 - 1320d -8

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(1)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to physicians' services for which payment shall be made by the Medicaid Program on behalf of both the categorically needy and the medically needy.

Section 1. Definitions. (1) "Biologicals" means the definition of biologicals pursuant to 42 U.S.C. 1395x(t)(1).

(2) "Common practice" means a contractual partnership in which a physician assistant administers health care services under the employment and supervision of a physician.

(3) [~~(2)~~] "Comprehensive choices" means a benefit plan for an individual who:

(a) Meets the nursing facility patient status criteria established in 907 KAR 1 022;

(b) Receives services through either:

1. A nursing facility in accordance with 907 KAR 1:022;

2. The Acquired Brain Injury Waiver Program in accordance with 907 KAR 3.090;

3. The Home and Community Based Waiver Program in accordance with 907 KAR 1:160, or

4. The Model Waiver II Program in accordance with 907 KAR 1:595; and

(c) Has a designated package code of F, G, H, I, J, K, L, M, O, P, Q, or R.

(4) [~~(3)~~] "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(5) [~~(4)~~] "Department" means the Department for Medicaid Services or its designee.

(6) [~~(5)~~] "Direct physician contact" means that the billing physician is physically present with and evaluates, examines, treats, or diagnoses the recipient.

(7) "Drug" means the definition of drugs pursuant to 42 U.S.C. 1395x(t)(1).

(8) [~~(6)~~] "Emergency care" means:

(a) Covered inpatient and outpatient services furnished by a qualified provider that are needed to evaluate or stabilize an emergency medical condition that is found to exist using the prudent layperson standard; or

(b) Emergency ambulance transport.

(9) [~~(7)~~] "EPSDT" means early and periodic screening, diagnosis, and treatment.

(10) [~~(8)~~] "Family choices" means a benefit plan for an individual who:

(a) Is covered pursuant to:

1. 42 U.S.C. 1396a(a)(10)(A)(i)(I) and 1396u - 1;

2. 42 U.S.C. 1396a(a)(52) and 1396r - 6 (excluding children eligible under Part A or E of title IV, codified as 42 U.S.C. 601 to 619 and 670 to 679b);

3. 42 U.S.C. 1396a(a)(10)(A)(i)(IV) as described in 42 U.S.C. 1396a(l)(1)(B);

4. 42 U.S.C. 1396a(a)(10)(A)(i)(VI) as described in 42 U.S.C.

1396a(l)(1)(C);

5. 42 U.S.C. 1396a(a)(10)(A)(i)(VII) as described in 42 U.S.C. 1396a(l)(1)(D); or

6. Has a designated package code of 2, 3, 4, or 5.

(11) [(9)] "Global period" means occurring during the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(12) [(10)] "Global choices" means the department's default benefit plan, consisting of individuals designated with a package code of A, B, C, D, or E and who are included in one (1) of the following populations:

(a) Caretaker relatives who:

1. Receive Kentucky Transitional Assistance Program (K-TAP) benefits and are deprived due to death, incapacity, or absence;

2. Do not receive K-TAP benefits and are deprived due to death, incapacity, or absence; or

3. Do not receive K-TAP benefits and are deprived due to unemployment;

(b) Individuals aged sixty-five (65) and over who receive supplemental security income (SSI) benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. Receive state supplementations program (SSP) benefits and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(c) Blind individuals who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022; or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(d) Disabled individuals who receive SSI benefits and:

1. Do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022, including children; or

2. SSP benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(e) Individuals aged sixty-five (65) and over who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status criteria in accordance with 907 KAR 1:022;

(f) Blind individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1:022;

(g) Disabled individuals who have lost SSI or SSP benefits, are eligible for "pass through" Medicaid benefits, and do not meet nursing facility patient status in accordance with 907 KAR 1.022; or

(h) Pregnant women.

(13) [(11)] "Graduate medical education program" or "GME Program" means one (1) of the following:

(a) A residency program approved by:

1. The Accreditation Council for Graduate Medical Education of the American Medical Association;

2. The Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association;

3. The Commission on Dental Accreditation of the American Dental Association; or

4. The Council on Podiatric Medicine Education of the American Podiatric Medical Association; or

(b) An approved medical residency program as defined in 42 C.F.R. 413.75(b).

(14) [(12)] "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires little additional resources; or

(b) Is clinically integral to the performance of the primary procedure.

(15) [(13)] "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(16) [(14)] "KenPAC" means the Kentucky Patient Access and Care System.

(17) [(15)] "KenPAC PCP" means a Medicaid provider who is enrolled as a primary care provider in the Kentucky Patient Access and Care System.

(18) [(16)] "Locum tenens" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(19) [(17)] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3.130.

(20) [(18)] "Medical resident" means one (1) of the following:

(a) An individual who participates in an approved graduate medical education (GME) program in medicine or osteopathy; or

(b) A physician who is not in an approved GME program, but who is authorized to practice only in a hospital, including:

1. An individual with a:

a. Temporary license;

b. Resident training license; or

c. Restricted license; or

2. An unlicensed graduate of a foreign medical school.

(21) [(19)] "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(22) [(20)] "Optimum choices" means a benefit plan for an individual who:

(a) Meets the intermediate care facility for individuals with mental retardation or a developmental disability patient status criteria established in 907 KAR 1:022;

(b) Receives services through either:

1. An intermediate care facility for individuals with mental retardation or a developmental disability in accordance with 907 KAR 1:022; or

2. The Supports for Community Living Waiver Program in accordance with 907 KAR 1:145; and

(c) Has a designated package code of S, T, U, V, W, X, Z, 0, or 1.

(23) [(21)] "Other licensed medical professional" means a health care provider other than a physician, physician assistant, advanced registered nurse practitioner, certified registered nurse anesthetist, nurse midwife, or registered nurse who has been approved to practice a medical specialty by the appropriate licensure board.

(24) [(22)] "Physician assistant" is defined in KRS 311.840(3).

(25) [(23)] "Screening" means the evaluation of a recipient by a physician to determine the presence of a disease or medical condition and if further evaluation, diagnostic testing or treatment is needed.

(26) "Special handling, storage, shipping, dosing or administration requirements" means one (1) or more of the following requirements as described in the dosing and administration section of a medication's package insert:

(a) Refrigeration of the medication;

(b) Protection from light until time of use;

(c) Overnight delivery;

(d) Avoidance of shaking or freezing; or

(e) Other protective measures not required for most orally-administered medications

(27) [(24)] "Supervising physician" is defined in KRS 311.840(4).

(28) [(25)] "Supervision" is defined in KRS 311.840(6).

(29) [(26)] "Timely filing" means receipt of a claim by Medicaid:

(a) Within twelve (12) months of the date the service was provided;

(b) Within twelve (12) months of the date retroactive eligibility was established; or

(c) Within six (6) months of the Medicare adjudication date if the service was billed to Medicare.

(30) [(27)] "Unlisted procedure or service" means a procedure for which there is not a specific CPT code and which is billed using

a CPT code designated for reporting unlisted procedures or services.

Section 2. Conditions of Participation. (1) A participating physician shall be licensed as a physician in the state in which the medical practice is located.

(2) A participating physician shall comply with the terms and conditions established in the following administrative regulations:

(a) 907 KAR 1:005, Nonduplication of payments;

(b) 907 KAR 1.671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeal process, and sanctions; and

(c) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation.

(3) A participating physician shall comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d to 1320d - 8 and 45 C.F.R. Parts 160 and 164.

(4) A participating physician shall have the freedom to choose whether to accept an eligible Medicaid recipient and shall notify the recipient of that decision prior to the delivery of service. If the provider accepts the recipient, the provider:

(a) Shall bill Medicaid rather than the recipient for a covered service;

(b) May bill the recipient for a service not covered by Medicaid if the physician informed the recipient of noncoverage prior to providing the service; and

(c) Shall not bill the recipient for a service that is denied by the department on the basis of:

1. The service being incidental, integral, or mutually exclusive to a covered service or within the global period for a covered service;

2. Incorrect billing procedures, including incorrect bundling of services;

3. Failure to obtain prior authorization for the service; or

4. Failure to meet timely filing requirements.

Section 3. Covered Services. (1) To be covered by the department, a service shall be:

(a) Medically necessary;

(b) ~~[Effective August 1, 2006,]~~ Clinically appropriate pursuant to the criteria established in 907 KAR 3:130;

(c) Except as provided in subsection (2) of this section, furnished to a recipient through direct physician contact; and

(d) Eligible for reimbursement as a physician service.

(2) Direct physician contact between the billing physician and recipient shall not be required for:

(a) A service provided by a medical resident if provided under the direction of a program participating teaching physician in accordance with 42 C.F.R. 415.174 and 415.184;

(b) A service provided by a locum tenens physician who provides direct physician contact;

(c) A radiology service, imaging service, pathology service, ultrasound study, echographic study, electrocardiogram, electromyogram, electroencephalogram, vascular study, or other service that is usually and customarily performed without direct physician contact;

(d) The telephone analysis of emergency medical systems or a cardiac pacemaker if provided under physician direction;

(e) A preauthorized sleep disorder service if provided in a physician operated and supervised sleep disorder diagnostic center;

(f) A telehealth consultation provided by a consulting medical specialist in accordance with 907 KAR 3:170; or

(g) A service provided by a physician assistant in accordance with Section 7 of this administrative regulation.

(3) A service provided by an individual who meets the definition of other licensed medical professional shall be covered if:

(a) The individual is employed by the supervising physician;

(b) The individual is licensed in the state of practice, and

(c) The supervising physician has direct physician contact with the recipient.

Section 4. Service Limitations. (1) A covered service provided to a recipient placed in "lock-in" status in accordance with 907 KAR 1:677 shall be limited to a service provided by the lock-in provider unless

(a) The service represents emergency care; or

(b) The recipient has been referred by the "lock-in" provider.

(2) An EPSDT screening service shall be covered in accordance with 907 KAR 1:034, Sections 3 through 5.

(3) A laboratory procedure performed in a physician's office shall be limited to a procedure for which the physician has been certified in accordance with 42 C.F.R. Part 493.

(4) Except for the following, a drug administered in the physician's office shall not be covered as a separate reimbursable service through the physician program:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device; or

(i) An implantable contraceptive device.

(j) Long acting injectable risperidone; or

(k) An injectable, infused or inhaled drug or biological that is:

a. Not typically self-administered;

b. Not excluded as a noncovered immunization or vaccine; and

c. Requires special handling, storage, shipping, dosing or administration.

(5) A service allowed in accordance with 42 C.F.R. 441, Subpart E or Subpart F, shall be covered within the scope and limitations of the federal regulations.

(6) Coverage for a service designated as a psychiatry service CPT code and provided by a physician other than a board certified or board eligible psychiatrist shall be limited to four (4) services, per physician, per recipient, per twelve (12) months.

(7)(a) Coverage for an evaluation and management service shall be limited to one (1) per physician, per recipient, per date of service.

(b) Coverage for an evaluation and management service with a corresponding CPT code of 99214 or 99215 shall be limited to two (2) per recipient per year, per diagnosis, per physician, except as established in paragraph (c) of this subsection.

(c) An evaluation and management service with a corresponding CPT of 99214 or 99215 exceeding the limit established in paragraph (b) of this subsection shall be covered if prior authorized by the department.

(8) Coverage for a fetal diagnostic ultrasound procedure shall be limited to two (2) per nine (9) month period per recipient unless the diagnosis code justifies the medical necessity of an additional procedure.

(9)(a) An anesthesia service shall be covered if administered by an anesthesiologist who remains in attendance throughout the procedure.

(b) Except for an anesthesia service provided by an oral surgeon, an anesthesia service, including conscious sedation, provided by a physician performing the surgery shall not be covered.

(10) The following services shall not be covered:

(a) An acupuncture service;

(b) Allergy immunotherapy for a recipient age twenty-one (21) years or older;

(c) An autopsy;

(d) A cast or splint application in excess of the limits established in 907 KAR 3:010, Section 4(5) and (6);

(e) Except for therapeutic bandage lenses, contact lenses;

(f) A hysterectomy performed for the purpose of sterilization;

(g) Lasik surgery;

(h) Paternity testing;

(i) A procedure performed for cosmetic purposes only;

(j) A procedure performed to promote or improve fertility;

(k) Radial keratotomy;

(l) A thermogram;

(m) An experimental service which is not in accordance with current standards of medical practice; or

(n) A service which does not meet the requirements estab-

lished in Section 3(1) of this administrative regulation.

Section 5. Prior Authorization Requirements and KenPAC Referral Requirements. (1) The following procedures shall require prior authorization by the department:

(a) Magnetic resonance imaging (MRI);
(b) Magnetic resonance angiogram (MRA);
(c) Magnetic resonance spectroscopy;
(d) Positron emission tomography (PET);
(e) Cineradiography/videoradiography;
(f) Xeroradiography;
(g) Ultrasound subsequent to second obstetric ultrasound;
(h) Myocardial imaging;
(i) Cardiac blood pool imaging;
(j) Radiopharmaceutical procedures;
(k) Gastric restrictive surgery or gastric bypass surgery;
(l) A procedure that is commonly performed for cosmetic purposes;
(m) A surgical procedure that requires completion of a federal consent form; or
(n) An unlisted procedure or service.

(2)(a) Prior authorization by the department shall not be a guarantee of recipient eligibility.

(b) Eligibility verification shall be the responsibility of the provider.

(3) The prior authorization requirements established in subsection (1) of this section shall not apply to:

(a) An emergency service; or
(b) A radiology procedure if the recipient has a cancer or transplant diagnosis code.

(4) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner may request prior authorization from the department.

(5) A referring physician, a physician who wishes to provide a given service, or an advanced registered nurse practitioner shall request prior authorization by mailing or faxing:

(a) A written request to the department with sufficient information to demonstrate that the service meets the requirements established in Section 3(1) of this administrative regulation; and
(b) If applicable, any required federal consent forms.

(6) Except for a service specified in 907 KAR 1:320, Section 10(3)(a) through (q), a referral from the KenPAC PCP shall be required for a recipient enrolled in the KenPAC Program.

Section 6. Therapy Limits. (1) Speech therapy shall be limited to:

(a) Ten (10) visits per twelve (12) months for a recipient of the Global Choices benefit plan;
(b) Thirty (30) visits per twelve (12) months for a recipient of the:
1. Comprehensive Choices benefit plan; or
2. Optimum Choices benefit plan.

(2) Physical therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit plan;
(b) Thirty (30) visits per twelve (12) months for a recipient of the:
1. Comprehensive Choices benefit plan; or
2. Optimum Choices benefit plan.

(3) Occupational therapy shall be limited to:

(a) Fifteen (15) visits per twelve (12) months for a recipient of the Global Choices benefit plan;
(b) Thirty (30) visits per twelve (12) months for a recipient of the:
1. Comprehensive Choices benefit plan; or
2. Optimum Choices benefit plan.

(4) The therapy limits established in subsection (1) through (3) of this section shall be over-ridden if the department determines that additional visits beyond the limit are medically necessary.

(5)(a) To request an override:

1. The provider shall telephone or fax the request to the department; and

2. The department shall review the request in accordance with the provisions of 907 KAR 3:130 and notify the provider of its decision.

(b) An appeal of a denial regarding a requested override shall be in accordance with 907 KAR 1:563.

(6) The limits established in subsections (1), (2), and (3) of this section shall not apply to a recipient under twenty-one (21) years of age. Except for recipients under age twenty-one (21), prior authorization is required for each visit that exceeds the limit established in subsection (1) through (3) of this section.

Section 7. Physician Assistant Services. (1) With the exception of a service limitation specified in subsections (2) or (3) of this section, a service provided by a physician assistant in common practice with a Medicaid-enrolled physician shall be covered if:

(a) The service meets the requirements established in Section 3(1) of this administrative regulation;
(b) The service is within the legal scope of certification of the physician assistant;
(c) The service is billed under the physician's individual provider number with the physician assistant's number included; and
(d) The physician assistant complies with:
1. KRS 311.840 to 311.862; and
2. Sections 2(2) and (3) of this administrative regulation.

(2) A same service performed by a physician assistant and a physician on the same day within a common practice shall be considered as one (1) covered service.

(3) The following physician assistant services shall not be covered:

(a) A physician noncovered service specified in Section 4(10) of this administrative regulation;
(b) An anesthesia service;
(c) An obstetrical delivery service; or
(d) A service provided in assistance of surgery.

Section 8. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVE BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of.

(a) What this administrative regulation does: This administrative regulation establishes the participation requirements for physicians and the coverage criteria for services provided by physicians to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides the necessary criteria and denotes the limitations for the provision of medically necessary physician services to Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes coverage of administration of a long acting injectable risperidone or an injectable, infused or inhaled drug or biological that is not typically self-administered, not excluded as a noncovered immunization or vaccine and requires special handling, storage, shipping, dosing or information; and increases evaluation and management service coverage from 1 per recipient per year to 2 per recipient per year with additional coverage contingent upon department prior authorization.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure or enhance recipient access to physician care via the department's coverage structure and to promote recipient health, safety and welfare by reimbursing for administration of drugs or biologicals requiring special handling or similar.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Reimbursement policies pertaining to covered Medicaid services impacts all physicians enrolled in the Kentucky Medicaid program (approximately 15,000).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than restrict coverage, the amendments favor providers, enhancing coverage. The amendment extends coverage to administration of certain drugs and biologicals which require special handling or similar and expands evaluation and management service per recipient per year coverage from 1 to 2 with additional allowed if prior authorized by the department.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost is anticipated, the amendments enhance coverage rather than restrict.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments enhance coverage rather than restrict coverage. The amendments extend coverage to administration of certain drugs and biologicals which require special handling or similar and expands evaluation and management service per recipient per year coverage from 1 to 2 with additional allowed if prior authorized by the department.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. The Department for Medicaid Services (DMS) anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(b) On a continuing basis: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. DMS anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation. The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all physicians enrolled in the Medicaid program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 447 Subpart B.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? DMS anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access

to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to physician care. Additionally, covering administration of drugs and biologicals which require special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Hospital and Provider Operations
(Amendment)

907 KAR 3:010. Reimbursement for physicians' services.

RELATES TO: KRS 205.560, 42 C.F.R. 440.50, 447 Subpart B, 42 U.S.C. 1396a, b, c, d, s

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the method of reimbursement for physicians' services by the Medicaid Program.

Section 1. Definitions. (1) "Add-on code" or "add-on service" means a service designated by a specific CPT code which may be used in conjunction with another CPT code to denote that an adjunctive service has been performed.

(2) "Assistant surgeon" means a physician who attends and acts as an auxiliary to a physician performing a surgical procedure.

(3) "Average wholesale price" or "AWP" means the average wholesale price published in a nationally-recognized comprehensive drug data file for which the department has contracted.

(4) "CPT code" means a code used for reporting procedures and services performed by physicians and published annually by the American Medical Association in Current Procedural Terminology.

(5) "Department" means the Department for Medicaid Services or its designee.

(6) "Established patient" means one who has received professional services from the provider within the past three (3) year period.

(7) "Global period" means the period of time in which related preoperative, intraoperative, and postoperative services and follow-up care for a surgical procedure are customarily provided.

(8) "Incidental" means that a medical procedure is performed at the same time as a primary procedure and:

(a) Requires few additional physician resources; or

(b) Is clinically integral to the performance of the primary procedure.

(9) "Integral" means that a medical procedure represents a component of a more complex procedure performed at the same time.

(10) "Locum tenens" means a substitute physician:

(a) Who temporarily assumes responsibility for the professional practice of a physician participating in the Kentucky Medicaid Program; and

(b) Whose services are paid under the participating physician's provider number.

(11) "Major surgery" means a surgical procedure assigned a ninety (90) day global period.

(12) "Medicaid Physician Fee Schedule" means a list of current reimbursement rates for physician services established by the department in accordance with Section 3 of this administrative regulation.

(13) "Minor surgery" means a surgical procedure assigned a ten (10) day global period.

(14) "Modifier" means a reporting indicator used in conjunction with a CPT code to denote that a medical service or procedure that has been performed has been altered by a specific circumstance while remaining unchanged in its definition or CPT code.

(15) "Mutually exclusive" means that two (2) procedures:

(a) Are not reasonably performed in conjunction with one another during the same patient encounter on the same date of service;

(b) Represent two (2) methods of performing the same procedure;

(c) Represent medically impossible or improbable use of CPT codes; or

(d) Are described in Current Procedural Terminology as inappropriate coding of procedure combinations.

(16) "Physician assistant" is defined in KRS 311.840(3).

(17) "Physician group practice" means two (2) or more licensed physicians who have enrolled both individually and as a group and share the same Medicaid group provider number.

(18) "Professional component" means the physician service component of a service or procedure that has both a physician service component and a technical component.

(19) "Relative value unit" or "RVU" means the Medicare-established value assigned to a CPT code which takes into consideration the physician's work, practice expense and liability insurance.

(20) "Resource-based relative value scale" or "RBRVS" means the product of the relative value unit (RVU) and a resource-based dollar conversion factor.

(21) "Technical component" means the part of a medical procedure performed by a technician, inclusive of all equipment, supplies, and drugs used to perform the procedure.

(22) "Usual and customary charge" means the uniform amount which a physician charges the general public for a specific medical procedure or service.

Section 2. Reimbursement. (1) Reimbursement for a covered service shall be made to:

(a) The individual participating physician; or

(b) A physician group practice enrolled in the Kentucky Medicaid Program.

(2) Except as provided in subsections (3) to (9) [(8)] of this section, reimbursement for a covered service shall be the lesser of:

(a) The physician's usual and customary charge; or

(b) The amount specified in the Medicaid Physician Fee Schedule established in accordance with Section 3 of this administrative regulation.

(3) If there is not an established fee in the Medicaid Physician Fee Schedule, the reimbursement shall be forty-five (45) percent of the usual and customary billed charge.

(4) Reimbursement for a service covered under Medicare Part B shall be made in accordance with 907 KAR 1:006, Section 3.

(5) If cost-sharing is required for a service to a recipient, the cost-sharing provisions established in 907 KAR 1:604 shall apply.

(6) Reimbursement for a service denoted by a modifier used in conjunction with a CPT code shall be as follows:

(a) A second anesthesia service provided by a provider to a recipient on the same date of service and reported by the addition of the two (2) digit modifier twenty-three (23) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;

(b) A professional component of a service reported by the addition of the two (2) digit modifier twenty-six (26) shall be reimbursed at the product of:

1. The Medicare value assigned to the physician's work; and

2. The dollar conversion factor specified in Section 3(2) of this administrative regulation;

(c) A technical component of a service reported by the addition of the two (2) letter modifier "TC" shall be reimbursed at the product of:

1. The Medicare value assigned to the practice expense involved in the performance of the procedure; and

2. The dollar conversion factor specified in Section 3(2) of this administrative regulation;

(d) A bilateral procedure reported by the addition of the two (2) digit modifier fifty (50) shall be reimbursed at 150 percent of the amount assigned to the CPT code;

(e) An assistant surgeon procedure reported by the addition of the two (2) digit modifier eighty (80) shall be reimbursed at sixteen (16) percent of the allowable fee for the primary surgeon;

(f) A procedure performed by a physician acting as a locum tenens for a Medicaid-participating physician reported by the addition of the two (2) character modifier Q six (6) shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable CPT code;

(g) An evaluation and management telehealth consultation service provided by a consulting medical specialist in accordance with 907 KAR 3.170 and reported by the two (2) letter modifier "GT" shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable evaluation and management CPT code; and

(h) A level II National HCPCS modifier designating a location on the body shall be reimbursed at the Medicaid Physician Fee Schedule amount for the applicable code.

(7) Except for a service specified in paragraphs (a) or (b) of this subsection, a physician laboratory service shall be reimbursed in accordance with 907 KAR 1:029.

(a) Charges for a laboratory test performed by dipstick or reagent strip or tablet in a physician's office shall be included in the office visit charge.

(b) A routine venipuncture procedure shall not be separately reimbursed if submitted with a charge for an office, hospital or emergency room visit or in addition to a laboratory test.

(8) Reimbursement for placement of a central venous, arterial, or subclavian catheter shall be:

(a) Included in the fee for the anesthesia if performed by the anesthesiologist;

(b) Included in the fee for the surgery if performed by the surgeon; or

(c) Included in the fee for an office, hospital or emergency room visit if performed by the same provider.

(9) The department shall reimburse a flat rate of seventy-two (72) dollars per office visit for an office visit occurring after 5 p.m. Monday through Friday or occurring after 12 p.m. on Saturday or anytime Sunday.

Section 3. Reimbursement Methodology. (1) Except for [~~With the exception of~~] a service specified in subsections (3) through (7) [~~(6)~~] of this section:

(a) The rate for a nonanesthesia related covered service shall be established by multiplying RVU by a dollar conversion factor to obtain the RBRVS maximum amount specified in the Medicaid Physician Fee Schedule; and

(b) The flat rate for a covered anesthesia service shall be established by multiplying the dollar conversion factor (designated as X) by the sum of each specific procedure code RVU (designated as Y) plus the actual [~~average~~] amount of time units spent on that specific procedure (designated as Z).

~~[1. The average time units shall be a static number based upon average time units obtained by the department.~~

~~2. The formula for obtaining a covered anesthesia service's flat rate shall be X multiplied by (Y plus Z).~~

~~3. The flat rate for a covered anesthesia service shall not exceed the rate that was in effect on June 1, 2006 by more than twenty (20) percent.~~]

(2) The dollar conversion factor shall be:

(a) Fourteen (14) dollars and eighty-five (85) [~~Thirteen (13) dollars and eighty-six (86)~~] cents for a nondelivery related anesthesia service; or

(b) Twenty-nine (29) dollars and sixty-seven (67) cents for all nonanesthesia related services.

(3) For the following services, reimbursement shall be the lesser of:

(a) The actual billed charge;

(b) A fixed fee of three (3) dollars and thirty (30) cents for:

1. Administration of a pediatric vaccine to a Medicaid recipient under the age of twenty-one (21); or

2. Administration of a flu vaccine;

(c) For delivery-related anesthesia services, a fixed rate described as follows:

1. Vaginal delivery, $215 [~~$200~~];

2. Cesarean section, $335 [~~$320~~];

3. Neuroxial labor anesthesia for a vaginal delivery or cesarean section, $350 [~~$335~~];

4. Additional anesthesia for cesarean delivery following neuroxial labor anesthesia for vaginal delivery shall be twenty-five (25) dollars;

5. Additional anesthesia for cesarean hysterectomy following neuroxial labor anesthesia shall be twenty-five (25) dollars; or

(d) A fixed rate of twenty-five (25) dollars for anesthesia add-on services provided to a recipient under age one (1) and over age seventy (70).

(4) Except as established in subsection (5) or (7)(c) of this section, the department shall reimburse the following drugs [~~A covered drug specified in 907 KAR 3:005, Section 4(4)(a) through (i) shall be reimbursed~~] at the lesser of the[~~:~~ ~~(a)~~] actual billed charge[~~,~~] or [~~(b)~~] average wholesale price (AWP) minus ten (10) percent if the drug is administered in a physician's office.

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;

(e) Ceftriaxone sodium injection;

(f) Intravenous immune globulin injection;

(g) Sodium hyaluronate or hylan G-F for intra-articular injection;

(h) An intrauterine contraceptive device;

(i) An implantable contraceptive device;

(j) Long acting injectable risperidone; or

(k) An injectable, infused or inhaled drug or biological that is:

a. Not typically self-administered;

b. Not excluded as a noncovered immunization or vaccine; and

c. Requires special handling, storage, shipping, dosing or administration.

(5) If long acting injectable risperidone is provided to an individual covered under both Medicaid and Medicare and administered by a physician employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall provide reimbursement at the same rate it reimburses for these drugs provided to a Medicaid recipient, except that the department shall reduce reimbursement by the amount of the third party obligation.

(6) [~~(5)~~] Reimbursement for a covered service provided by a physician assistant shall be:

(a) Made to the employing physician; or

(b) Included in the facility reimbursement if the physician assistant is employed by a primary care center, federally qualified health center, rural health clinic, or comprehensive care center.

(7)[~~(6)~~](a) Except for an item identified in paragraph (b) or (c) of this subsection, reimbursement for a service provided by a physician assistant shall be seventy-five (75) percent of the amount reimbursable to a physician in accordance with this section and Section 4 of this administrative regulation.

(b) Except as established in paragraph (c) of this subsection, the department shall reimburse the following drugs at the lesser of the actual billed charge or average wholesale price (AWP) minus ten (10) percent if the drug is administered in a physician's office by a physician assistant:

(a) Rho (D) immune globulin injection;

(b) An injectable antineoplastic drug;

(c) Medroxyprogesterone acetate for contraceptive use, 150 mg;

(d) Penicillin G benzathine injection;
(e) Ceftriaxone sodium injection;
(f) Intravenous immune globulin injection;
(g) Sodium hyaluronate or hylan G-F for intra-articular injection;
(h) An intrauterine contraceptive device;
(i) An implantable contraceptive device;
(j) Long acting injectable risperidone; or
(k) An injectable, infused or inhaled drug or biological that is:
a. Not typically self-administered;
b. Not excluded as a noncovered immunization or vaccine; and
c. Requires special handling, storage, shipping, dosing or administration.

(c) If long acting injectable risperidone is provided to an individual covered under both Medicaid and Medicare and administered by a physician assistant employed by a community mental health center or other licensed medical professional employed by a community mental health center, the department shall provide reimbursement at the same rate it reimburses for these drugs provided to a Medicaid recipient, except that the department shall reduce reimbursement by the amount of the third party obligation. ~~[If provided by a physician assistant, an injectable antibiotic, antineoplastic chemotherapy agent or a contraceptive identified in 907 KAR 3:005, Section 4(4)(a) through (i), shall be reimbursed at the lesser of the:~~
~~1. Actual billed charge; or~~
~~2. Average wholesale price (AWP) of the drug minus ten (10) percent.]~~

Section 4. Reimbursement Limitations. (1)(a) With the exception of chemotherapy administration to a recipient under the age of nineteen (19) years, reimbursement for an evaluation and management service with a corresponding CPT code of 99214 or 99215 ~~[representing medical decision making of moderate or high complexity for an established patient]~~ shall be limited to two (2) ~~[one (1) evaluation and management service of either moderate complexity or high complexity]~~ per recipient~~[, per diagnosis,]~~ per twelve (12) months.

(b) An additional evaluation and management service referenced in paragraph (a) of this subsection shall be covered if prior authorized by the department.

(c) A claim for an evaluation and management service of moderate or high complexity in excess of this limit shall be reimbursed at the Medicaid rate for the evaluation and management service representing medical decision making of low complexity.

(2) Reimbursement for an anesthesia service shall include:
(a) Preoperative and postoperative visits;
(b) Administration of the anesthetic;
(c) Administration of fluids and blood incidental to the anesthesia or surgery;
(d) Postoperative pain management;
(e) Preoperative, intraoperative, and postoperative monitoring services; and
(f) Insertion of arterial and venous catheters.

(3) With the exception of an anesthetic, contrast, or neurolytic solution, administration of a substance by epidural or spinal injection for the control of chronic pain shall be limited to three (3) injections per six (6) month period per recipient.

(4) If related to the surgery and provided by the physician who performs the surgery, reimbursement for a surgical procedure shall include the following:
(a) A preoperative service;
(b) An intraoperative service;
(c) A postoperative service and follow-up care within:
1. Ninety (90) days following the date of major surgery; or
2. Ten (10) days following the date of minor surgery; and
(d) A preoperative consultation performed within two (2) days of the date of the surgery.

(5) Reimbursement for the application of a cast or splint shall be limited to two (2) per ninety (90) day period for the same injury or condition.

(6) Reimbursement for the application of a cast or splint associated with a surgical procedure shall be considered to include:
(a) A temporary cast or splint, if applied by the same physician who performed the surgical procedure;
(b) The initial cast or splint applied during or following the surgical procedure; and
(c) A replacement cast or splint needed as a result of the surgical procedure if:
1. Provided within ninety (90) days of the procedure by the same physician; and
2. Applied for the same injury or condition.

(7) Multiple surgical procedures performed by a physician during the same operative session shall be reimbursed as follows:
(a) The major procedure, an add-on code, and other CPT codes approved by the department for billing with units shall be reimbursed in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation; and
(b) The additional surgical procedure shall be reimbursed at fifty (50) percent of the amount determined in accordance with Section 3(1)(a) or (2)(b) of this administrative regulation.

(8) When performed concurrently, separate reimbursement shall not be made for a procedure that has been determined by the department to be incidental, integral, or mutually exclusive to another procedure.

(9) Reimbursement shall not be made for the cost of a vaccine that is administered by a physician.

Section 5. Supplemental Payments. (1) In addition to a reimbursement made pursuant to Sections 2 through 4 of this administrative regulation, the department shall make a supplemental payment to a medical school faculty physician employed by a state-supported school of medicine that is part of a university health care system that includes a:
(a) Teaching hospital; and
(b) Pediatric teaching hospital.

(2) A supplemental payment plus other reimbursements made in accordance with this administrative regulation shall not exceed the physician's charge for the service provided and shall be paid directly or indirectly to the medical school.

(3) A supplemental payment made in accordance with this section shall be:
(a) Based on the funding made available through an intergovernmental transfer of funds for this purpose by a state-supported school of medicine meeting the criteria established in subsection (1) of this section;
(b) Consistent with the requirements of 42 C.F.R. 447.325; and
(c) Made on a quarterly basis.

Section 6. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may

submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the reimbursement criteria for services provided by physicians to Medicaid recipients.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement criteria for payment of medically necessary physician services to eligible Medicaid recipients.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation: This amendment establishes reimbursement for physician office visit care beyond typical working hours - extended hour rate is effective Monday through Friday 5 p.m. and weekends; increases evaluation and management service coverage from 1 per recipient per year to 2 per recipient per year with additional coverage contingent upon department prior authorization; inserts actual units of time into anesthesiology reimbursement as opposed to an average as was previously used; establishes reimbursement for administration of a long acting injectable risperidone or an injectable, infused or inhaled drug or biological that is not typically self-administered, not excluded as a noncovered immunization or vaccine and requires special handling, storage, shipping, dosing or information; increases delivery-related anesthesia reimbursement; and increases the dollar conversion factor for nondelivery related anesthesia from $13.86 to $15.20 cents.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to ensure or enhance recipient access to physician care via the department's reimbursement/coverage structure, to promote care delivered in a physician's office versus an emergency room setting and to promote recipient health, safety and welfare by reimbursing for administration of drugs or biologicals requiring special handling or similar.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes reimbursement to promote recipient access to physician care and to promote recipient health, safety and welfare within the extent and scope authorized by state and federal law by.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Reimbursement policies pertaining to covered Medicaid services impacts all physicians enrolled in the Kentucky Medicaid Program (approximately 15,000).

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Rather than introducing mandates on providers, the amendments favor providers, enabling them to receive a flat rate for providing care beyond normal office hours, for administering certain drugs and biologicals which require special handling or similar, will be reimbursed for actual units of time for anesthesiology and for 2 as opposed to 1 evaluation and management service per recipient per year and will receive increased reimbursement for anesthesia services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Providers will receive an enhanced reimbursement for care provided beyond normal office hours, will be able to receive reimbursement for 2 rather than 1 evaluation and management service per recipient per year, will be reimbursed for administration of drugs or biologicals requiring special handling or similar, will be reimbursed for actual units of anesthesia service time, and will receive increased reimbursement for anesthesia services. The amendments enhance provider reimbursement rather than cost providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments enhance provider reimbursement rather than cost providers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually.

(b) On a continuing basis: The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: The current fiscal year budget will not need to be adjusted to provide funds for implementing this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or increase any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in

this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect all physicians enrolled in the Medicaid Program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 C.F.R. 447 Subpart B.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.

(c) How much will it cost to administer this program for the first year? The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually

(d) How much will it cost to administer this program for subsequent years? The aggregate fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. Though enhanced reimbursement will increase expenditures, the measures are necessary to enhance recipient access to physician care. Some increases, such as reimbursement for extended office hour care, may reduce department costs as recipients presumably will turn to physician offices for care which they may otherwise typically sought in an emergency room setting. Additionally, reimbursement for administration of drugs and biologicals requiring special handling may reduce waste of drugs or biologicals contaminated due to recipient mishandling as well as enhance recipient health, safety and welfare. DMS expects the anesthesiology OB rate increases and nondelivery related anesthesia dollar conversion factor increase to cost a combined approximate $485,000 ($337,000 federal funds/$148,000 state funds) annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): ____

Expenditures (+/-): ____

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Long Term Care and Community Alternatives
(Emergency Amendment)

907 KAR 3:090. Acquired brain injury services.

RELATES TO: KRS 205.5605, 205.5606, 205.5607, 205.8451, 205.8477, 42 C.F.R. 441 Subpart G, 455 Subpart B, 42 U.S.C. 1396a, b, d, n

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: [~~Executive Order 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services.~~] The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the coverage provisions relating to home- and community-based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services. The purpose of acquired brain injury waiver services is to rehabilitate and retrain an individual with an acquired brain injury to reenter and function independently within a community, given the community's existing resources. KRS 205.5606(1) requires the cabinet to promulgate administrative regulations to establish a consumer-directed services program to provide an option for the home and community-based services waivers. Therefore, this administrative regulation also implements a consumer-directed option program pursuant to KRS 205.5606.

Section 1. Definitions. (1) "ABI" means an acquired brain injury.

(2) "ABI provider" means an entity that meets the criteria established in Section 2 of this administrative regulation.

(3) "ABI recipient" means an individual who meets the criteria established in Section 3 of this administrative regulation.

(4) "Acquired brain injury waiver service" or "ABI waiver service" means a home and community based waiver service for an individual who has acquired a brain injury to his or her central nervous system of the following nature:

(a) Injury from a physical trauma;

(b) Damage from anoxia or a hypoxic episode; or

(c) Damage from an allergic condition, toxic substance or another acute medical incident.

(5) "Assessment" or "reassessment" means a comprehensive evaluation of abilities, needs, and services that is:

(a) Completed on a MAP-351;

(b) Submitted to the department:

1. For a level of care determination; and

2. No less than every twelve (12) months thereafter. [~~"Assessment of needs and plan of care" means a written assessment and individualized plan submitted on a MAP-011 form that is developed by:~~

~~(a) An ABI recipient and legal representative if appointed,~~

~~(b) A case manager,~~

~~(c) An ABI service provider; and~~

~~(d) Others as designated by the ABI recipient.~~]

(6) "Behavior intervention committee" or "BIC" means a group of individuals established to evaluate the technical adequacy of a proposed behavior intervention for an ABI recipient.

(7) "BISB" [~~"BISU"~~] or "brain injury service branch[~~unit~~]" means the brain injury service branch [~~unit in the Division of Mental Health, Department for Mental Health and Mental Retardation~~].

(8) "Blended services" means a nonduplicative combination of ABI waiver services identified in Section 4 of this administrative

regulation and CDO services identified in Section 8 of this administrative regulation provided pursuant to a recipient's approved plan of care.

(9) "Board certified behavior analyst" means an independent practitioner who is certified by the Behavior Analyst Certification Board, Inc.

(10) "Budget allowance" is defined by KRS 205 5605(1).

(11) "Case manager" means an individual who manages the overall development and monitoring of a recipient's [~~assessment of needs and~~] plan of care.

(12) "Consumer" is defined by KRS 205.5605(2).

(13) "Consumer directed option" or "CDO" means an option established by KRS 205.5606 within the home and community based services waiver that allows recipients to:

(a) Assist with the design of their programs;

(b) Choose their providers of services; and

(c) Direct the delivery of services to meet their needs.

(14) "Covered services and supports" is defined by KRS 205 5605(3).

(15)[~~(9)~~] "Crisis prevention and response plan" means a plan developed to identify any potential risk to a recipient and to detail a strategy to minimize the risk.

(16)[~~(10)~~] "DCBS" means the Department for Community Based Services.

(17)[~~(11)~~] "Department" means the Department for Medicaid Services or its designee.

(18)[~~(12) "DMHMR" means the Department for Mental Health and Mental Retardation Services.~~

~~(13)~~] "Good cause" means a circumstance beyond the control of an individual that affects the individual's ability to access funding or services, including:

(a) Illness or hospitalization of the individual which is expected to last sixty (60) days or less;

(b) Death or incapacitation of the primary caregiver;

(c) Required paperwork and documentation for processing in accordance with Section 3 of this administrative regulation that has not been completed but is expected to be completed in two (2) weeks or less; or

(d) The individual or his or her legal representative has made diligent contact with a potential provider to secure placement or access services but has not been accepted within the sixty (60) day time period.

(19)[~~(14)~~] "Human rights committee" means a group of individuals established to protect the rights and welfare of an ABI recipient.

(20)[~~(15)~~] "Interdisciplinary team" means a group of individuals that assist in the development and implementation of an ABI's recipient's plan of care consisting of:

(a) The ABI recipient and legal representative if appointed;

(b) A chosen ABI service provider;

(c) A case manager; or

(d) Others as designated by the ABI recipient.

(21) "Licensed professional clinical counselor" is defined by KRS 335 500(3).

(22)[~~(16)~~] "Medically necessary" or "medical necessity" means that a covered benefit is determined to be needed in accordance with 907 KAR 3:130.

(23) "Licensed marriage and family therapist" or "LMFT" is defined by KRS 335.300(2).

(24)[~~(17)~~] "Occupational therapist" is defined by [~~means an individual who is licensed in accordance with~~] KRS 319A.010(3).

(25) "Occupational therapy assistant" is defined by KRS 319A 010(4).

(26) "Patient liability" means the financial amount an individual is required to contribute towards cost of care in order to maintain Medicaid eligibility.

(27)[~~(18)~~] "Psychologist" means an individual who is licensed in accordance with KRS 319.050.

(28)[~~(19)~~] "Psychologist with autonomous functioning" means an individual who is licensed in accordance with KRS 319.056.

(29)[~~(20)~~] "Qualified mental health professional" is defined by [~~means a qualified mental health professional as defined in~~] KRS 202A.011(12).

(30) "Representative" is defined by KRS 205.5605(6).

(31)[~~(21)~~] "Speech therapist" means an individual who is licensed in accordance with KRS 334A.030.

(32) "Support broker" means an individual designated by the department to:

(a) Provide training, technical assistance, and support to a consumer; and

(b) Assist a consumer in any other aspects of CDO.

(33) "Support spending plan" means a plan for a consumer that identifies the:

(a) CDO services requested;

(b) Employee name;

(c) Hourly wage;

(d) Hours per month;

(e) Monthly pay;

(f) Taxes; and

(g) Budget allowance.

(34)[~~(22)~~] "Transition plan" means a plan that is developed to aid an ABI recipient in exiting [~~transitioning~~] from the ABI program into the community.

Section 2. Non-CDO Provider Participation. (1) In order to provide an ABI waiver service in accordance with Section 4 of this administrative regulation, excluding a consumer-directed option service, an ABI provider shall:

(a) Be enrolled as a Medicaid provider in accordance with 907 KAR 1:671, Conditions of Medicaid provider participation; withholding overpayments, administrative appeals process, and sanctions;

(b) Be certified by the department prior to the initiation of the service;

(c) Be recertified at least annually by the department; and

(d) Have an office within the Commonwealth of Kentucky.

(2) An ABI provider shall comply with:

(a) 907 KAR 1:672, Provider enrollment, disclosure, and documentation for Medicaid participation;

(b) 907 KAR 1.673, Claims processing, and

(c) 902 KAR 20.078, Operations and services; group homes

(3) An ABI provider shall have a governing body that shall be:

(a) [Be] a legally-constituted entity within the Commonwealth of Kentucky; and

(b) [Be] responsible for the overall operation of the organization including establishing policy that complies with this administrative regulation concerning the operation of the agency and the health, safety and welfare of an ABI recipient served by the agency.

(4) An ABI provider shall:

(a) Unless participating in the CDO program, ensure that an ABI waiver service is not provided to an ABI recipient by a staff member of the ABI provider who has one (1) of the following blood relationships to the ABI recipient:

1. Child;
2. Parent;
3. Sibling; or
4. Spouse;

(b) Not enroll an ABI recipient for whom the ABI provider [~~they~~] cannot meet the service needs; and

(c) Have and follow written criteria that complies with this administrative regulation for determining the eligibility of an individual for admission to services.

(5) An ABI provider shall comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, 42 U.S.C. 1320d to 1320d-8.

(6) An ABI provider shall meet the following requirements if responsible for the management of an ABI recipient's [~~recipient~~] funds:

(a) Separate accounting shall be maintained for each ABI recipient or for his or her interest in a common trust or special account;

(b) Account balance and records of transactions shall be provided to the ABI recipient or legal representative on a quarterly basis; and

(c) The ABI recipient or legal representative shall be notified when a large balance is accrued that may affect Medicaid eligibility.

(7) An ABI provider shall have a written statement of its mission and values.

(8) An ABI provider shall have written policy and procedures for communication and interaction with a family and legal representative of an ABI recipient which shall:

(a) Require a timely response to an inquiry;

(b) Require the opportunity for interaction with direct care staff;

(c) Require prompt notification of any unusual incident;

(d) Permit visitation with the ABI recipient at a reasonable time and with due regard for the ABI recipient's right of privacy;

(e) Require involvement of the legal representative in decision-making regarding the selection and direction of the service provided; and

(f) Consider the cultural, educational, language and socioeconomic characteristics of the ABI recipient.

(9) An ABI provider shall ensure the rights of an ABI recipient by:

(a) Making available a description of the rights and the means by which the rights may [~~they can~~] be exercised, including [~~which shall include~~]:

1. The right to time, space, and opportunity for personal privacy;

2. The right to retain and use personal possessions including clothing, and personal spending money [~~and cigarettes~~]; and

3. For a residential, personal care, companion or respite provider, the right to communicate, associate and meet privately with a person of the ABI recipient's choice, including:

a. The right to send and receive unopened mail; and

b. The right to private, accessible use of the telephone;

(b) Maintaining a grievance and appeals system; and

(c) [~~Establishing a human rights committee which shall:~~

~~1. Include an:~~

~~a. Individual with a brain injury or a family member of an individual with a brain injury;~~

~~b. Individual not affiliated with the ABI provider; and~~

~~c. Individual who has knowledge and experience in rights issues;~~

~~2. Review and approve each assessment of need and plan of care with rights restrictions at a minimum of every six (6) months; and~~

~~3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that include highly restrictive procedures or contain rights restrictions;~~

~~(d) Establishing a behavior intervention committee which shall:~~

~~1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;~~

~~2. Be separate from the human rights committee, and~~

~~3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain rights restrictions, and~~

~~(e)~~] Complying with the Americans with Disabilities Act (28 C.F.R. Part 35)

(10) An ABI provider shall maintain fiscal and service records and incident reports for a minimum of six (6) years from the date that a covered service is provided and all the records and reports shall be made available to the:

(a) [~~The~~] Department;

(b) [~~DMHMR or its designee;~~

~~(c) The~~] ABI recipient's selected case manager;

(c)[~~(d) The Commonwealth of Kentucky,~~] Cabinet for Health and Family Services, Office of Inspector General or its designee;

(d)[~~(e) The United States~~] General Accounting Office or its designee;

(e)[~~(f) The Commonwealth of Kentucky,~~] Office of the Auditor of Public Accounts or its designee;

(f)[~~(g) The Commonwealth of Kentucky,~~] Office of the Attorney General or its designee; or

(g)[~~(h) The~~] Centers for Medicare and Medicaid Services.

(11) An ABI provider shall cooperate with monitoring visits from monitoring agents.

(12) An ABI provider shall maintain a record for each ABI recipient served that shall:

(a) Be recorded in permanent ink;

(b) Be free from correction fluid;

(c) Have a strike through each error which is initialed and dated; and

(d) Contain no blank lines in between each entry.

(13) A record of each ABI recipient who is served shall:

(a) Be cumulative;

(b) Be readily available;

(c) Contain a legend that identifies any symbol and abbreviations used in making a record entry;

(d) Contain the following specific information:

1. The ABI recipient's name, Social Security number and Medical Assistance [~~Medicaid~~] Identification Number (MAID);

2. An assessment summary relevant to the service area;

3. The [~~assessment of needs and~~] plan of care, MAP-109;

4. The crisis prevention and response plan that shall include:

a. A list containing emergency contact telephone numbers; and

b. The ABI recipient's history of any allergies with appropriate allergy alerts for severe allergies;

5. The transition plan that shall include:

a. Skills to be obtained from the ABI waiver program;

b. A listing of the on-going formal and informal community services available to be accessed; and

c. A listing of additional resources needed;

6. The training objective for any service which provides skills training to the ABI recipient;

7. The ABI recipient's medication record, including a copy of the prescription or the signed physician's order and the medication log if medication is administered at the service site;

8. Legally-adequate consent for the provision of services or other treatment including a consent for emergency attention which shall be located at each service site;

9. The Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350 updated at recertification; and

10. [~~Original and~~] Current level of care certification;

(e) Be maintained by the provider in a manner to ensure the confidentiality of the ABI recipient's record and other personal information and to allow the ABI recipient or legal representative to determine when to share the information as provided by law;

(f) Be secured against [~~Have the safety from~~] loss, destruction or use by an unauthorized person ensured by the provider; and

(g) Be available to the ABI recipient or legal guardian according to the provider's written policy and procedures which shall address the availability of the record.

(14) An ABI provider shall:

(a)1. Ensure that each staff person and volunteer performing direct care or a supervisory function[~~, prior to providing direct care to a recipient,~~] has tested negatively for tuberculosis within the past twelve (12) months as documented on test results received by the provider within seven (7) days of the date of hire or date the individual began serving as a volunteer; and

2. Maintain documentation of each staff person's and, if a volunteer performs direct care or a supervisory function, the volunteer's negative tuberculosis test described in subparagraph 1 of this paragraph;

(b) For each potential employee and volunteer expected to perform direct care or a supervisory function, obtain:

1. Prior to the date of hire or date of service as a volunteer, the results of:

a. A criminal record check from the Administrative Office of the Courts and equivalent out-of-state agency if the individual resided, worked, or volunteered outside Kentucky during the year prior to employment or volunteer service;

b. A nurse aide abuse registry check as described in 906 KAR 1:100; and

2. Within fourteen (14) days of the date of hire or date of service as a volunteer, the results of a central registry check as described in 922 KAR 1:470; [~~for each state in which the individual resided during the previous year:~~

~~1. Prior to employment, and~~

~~2. Prior to placement as a volunteer performing direct care staff or a supervisory function,~~]

(c) Not employ or permit [~~place~~] an individual to serve as a volunteer performing direct care or a supervisory function if the individual has [~~with~~] a prior conviction of an offense delineated in

KRS 17.165(1) through (3) or prior felony conviction;

(d) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [who] has a conviction of Driving Under the Influence (DUI) during the past year to transport an ABI recipient;

(e) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [who] has a conviction of abuse or sale of illegal drugs;

(f) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [who] has a conviction of abuse, neglect or exploitation;

(g) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual [who] has a Cabinet for Health and Family Services finding of child [substantiated fraud,] abuse or neglect pursuant to the central registry [allegation];

(h) Not employ or permit an individual to serve as a volunteer performing direct care or a supervisory function if the individual is listed on the nurse aide abuse registry;

(i) Evaluate the performance of each employee upon completion of the agency's designated probationary period and at a minimum of annually thereafter; and

(j)[(i)] Conduct periodic and regularly-scheduled supervisory visits of all professional and paraprofessional direct-service staff at the service site in order to ensure that high quality, appropriate services are provided to the ABI recipient.

(15) An ABI provider shall:

(a) Have an executive director who:

1. Is qualified with a bachelor's degree from an accredited institution in administration or a human services field; and

2. Has a minimum of one (1) year of administrative responsibility in an organization which served an individual with a disability; and

(b) Have adequate direct-contact staff who:

1. Is eighteen (18) years of age or older;

2. Has a high school diploma or GED; and

3 a. Has a minimum of two (2) years experience in providing a service to an individual with a disability; or

b. Has successfully completed a formalized training program such as nursing facility nurse aide training.

(16) An ABI provider shall establish written guidelines that address the health, safety and welfare of an ABI recipient, which shall include:

(a) Ensuring the health, safety and welfare of the ABI recipient;

(b) The prohibition of firearms and ammunition at a provider-service site;

(c) Maintenance of sanitary conditions;

(d) Ensuring each site operated by the provider is equipped with:

1. Operational smoke detectors placed in strategic locations; and

2. A minimum of two (2) correctly-charged fire extinguishers placed in strategic locations, one (1) of which shall be capable of extinguishing a grease fire and have a rating of 1A10BC;

(e) For a residential or structured day provider, ensuring the availability of an ample supply of hot and cold running water with the water temperature at a tap used by the ABI recipient not exceeding 120 [110] degrees Fahrenheit;

(f) Ensuring that the nutritional needs of the ABI recipient are met in accordance with the current recommended dietary allowance of the Food and Nutrition Board of the National Research Council or as specified by a physician;

(g) Unless the employee is a licensed or registered nurse, ensuring that staff administering medication:

1. Have specific training provided by a licensed medical professional and documented competency on cause and effect and proper administration and storage of medication which shall be provided by a nurse, pharmacist or medical doctor; and

2. Document all medication administered, including self-administered, over-the-counter drugs, on a medication log, with the date, time, and initials of the person who administered the medication and ensure that the medication shall:

a. Be kept in a locked container;

b. If a controlled substance, be kept under double lock;

c. Be carried in a proper container labeled with medication, dosage, and time if administered to the ABI recipient or self-administered at a program site other than his or her residence; and

d. Be documented on a medication administration form and properly disposed of if discontinued; and

(h) Policy and procedures for on-going monitoring of medication administration as approved by the department.

(17) An ABI provider shall establish and follow written guidelines for handling an emergency or a disaster which shall:

(a) Be readily accessible on site;

(b) Include an evacuation drill to be conducted and documented at least quarterly and for a residential setting, scheduled to include a time when an ABI recipient is asleep; and

(c) Mandate that the result of an evacuation drill be evaluated and modified as needed.

(18) An ABI provider shall:

(a) Provide orientation for each new employee which shall include the mission, goals, organization and policy of the agency;

(b) Require documentation of all training which shall include:

1. The type of training provided;

2. The name and title of the trainer;

3. The length of the training;

4. The date of completion; and

5. The signature of the trainee verifying completion;

(c) Ensure that each employee complete ABI training consistent with the curriculum that has been approved by the department [DMHMR] prior to working independently with an ABI recipient which shall include.

1. Required [Sixteen (16) hours of] orientation in brain injury;

2. Identifying and reporting abuse, neglect and exploitation;

3. Unless the employee is a licensed or registered nurse, first aid, which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization; and

4. Coronary pulmonary resuscitation which shall be provided by an individual certified as a trainer by the American Red Cross or other nationally-accredited organization;

(d) Ensure that each employee completes six (6) hours of continuing education in brain injury annually;

(e) Not be required to receive the training specified in paragraph (c)1 of this subsection if the provider is a professional who has, within the prior five (5) years, 2000 hours of experience in serving a person with a primary diagnosis of a brain injury including:

1. An occupational therapist or occupational therapy assistant providing occupational therapy;

2. A psychologist or psychologist with autonomous functioning providing psychological services, or

3. A speech therapist providing speech therapy; or

4. A board certified behavior analyst; and

(f) [Ensure that an individual, prior to volunteering, meets the requirements specified in subsection (14)(a), (b), (c), (d) (e), (f) and (g) of this section; and

(g)] Ensure that prior to the date of service as a volunteer, an individual receive [volunteer, prior to working, receives] training which shall include:

1. Required [Sixteen (16) hours of] orientation in brain injury as specified in paragraph (c)1, 2, 3, and 4 of this subsection;

2. Orientation to the agency;

3. A confidentiality statement; and

4. Individualized instruction on the needs of the ABI recipient to whom the volunteer will provide services.

(19) An ABI provider shall provide information to a case manager necessary for completion of a Mayo-Portland Adaptability Inventory-4 for each ABI recipient served by the provider.

(20) A case management provider shall:

(a) Establish a human rights committee which shall:

1. Include an:

a. Individual with a brain injury or a family member of an individual with a brain injury;

b. Individual not affiliated with the ABI provider; and

c. Individual who has knowledge and experience in human rights issues;

2. Review and approve each plan of care with human rights

restrictions at a minimum of every six (6) months; and

3. Review and approve, in conjunction with the ABI recipient's team, behavior intervention plans that include highly restrictive procedures or contain human rights restrictions; and

(b) Establish a behavior intervention committee which shall:

1. Include one (1) individual who has expertise in behavior intervention and is not the behavior specialist who wrote the behavior intervention plan;

2. Be separate from the human rights committee; and

3. Review and approve, prior to implementation and at a minimum of every six (6) months in conjunction with the ABI recipient's team, an intervention plan that includes highly restrictive procedures or contain human rights restrictions; and

(c) Complete and submit a Mayo-Portland Adaptability Inventory-4 to the department for each ABI recipient:

1. Within thirty (30) days of the recipient's admission into the ABI program;

2. Annually thereafter; and

3. Upon discharge.

Section 3. ABI Recipient Eligibility, Enrollment and Termination. (1) To be eligible to receive a service in the ABI program[~~, an individual shall~~]:

(a) An individual shall be twenty-one (21) to sixty-five (65) years of age with an ABI that involves cognition, behavior, or a physical function which necessitates supervised and rehabilitative services;

(b) An individual shall be placed on the ABI waiting list in accordance with Section 7 of this administrative regulation;

(c) An application packet containing the following shall be submitted by a support broker on behalf of the applicant [~~Submit an application packet to the department which shall contain~~]:

1. A copy of the allocation letter [~~received from BISU~~];

2. An Assessment form - MAP-351 [~~of Needs and Plan of Care form - MAP-011~~];

3. A statement for the need for long term care services which shall be signed and dated by a physician on an Acquired Brain Injury Waivers Services form - MAP-10 [~~Program Physician Certification form - MAP-4099~~];

4. A Long Term Care Facilities and Home and Community Based Program Certification form - MAP-350; [~~and~~]

5. A Plan of Care form - MAP-109; and

6. The ABI Recipient's Admission Discharge DCBS Notification Form - MAP 24C;

(d) An individual shall [~~MAP-562K, Department for Community Based Services Notice of Availability of Income for Long Term Care/Waiver Agency/Hospice form;~~

~~(d) Submit the following information to the department:~~

~~1. An ABI Waiver Services Program Applicant/Recipient Memorandum of Understanding form - MAP-4096;~~

~~2. The ABI Recipient's Admission Discharge DCBS Notification form - MAP-24B; and~~

~~3. A Freedom of Choice of Home and Community Based Waiver Service Providers form - MAP-4102;~~

~~(e)~~] Receive notification of potential funding allocated for ABI services for the individual in accordance with Section 7 of this administrative regulation;

(e) An individual shall[~~(f)~~] meet the patient status criteria for nursing facility services established in 907 KAR 1:022 including nursing facility services for a brain injury;

(f) An individual shall[~~(g)~~] meet the following conditions:

1. Have a primary diagnosis that indicates an ABI with structural, nondegenerative brain injury;

2. Be medically stable;

3. Meet Medicaid eligibility requirements established in 907 KAR 1.605;

4. Exhibit cognitive, behavioral, motor or sensory damage with an indication for rehabilitation and retraining potential; and

5. Have a rating of at least four (4) on the Rancho Los Amigos Level of Cognitive Function Scale; and

(g) An individual shall[~~(h)~~] receive notification of approval from the department.

(2) An individual shall not remain in the ABI waiver program for an indefinite period of time

(3) The basis of an eligibility determination for participation in the ABI waiver program shall be:

(a) The presenting problem;

(b) The [~~assessment of needs and~~] plan of care goal;

(c) The expected benefit of the admission;

(d) The expected outcome;

(e) The service required; and

(f) The cost effectiveness of service delivery as an alternative to nursing facility and nursing facility brain injury services.

(4) An ABI waiver service shall not be furnished to an individual if the individual is:

(a) An inpatient of a hospital, nursing facility or an intermediate care facility for individuals with mental retardation or a developmental disability; or

(b) Receiving a service in another home and community based waiver program.

(5) The department shall make:

(a) An initial evaluation to determine if an individual meets the nursing facility level of care criteria established in 907 KAR 1:022; and

(b) A determination of whether to admit an individual into the ABI waiver program.

(6) To maintain eligibility as an ABI recipient:

(a) An individual shall maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

(b) A reevaluation shall be conducted at least once every twelve (12) [~~six (6)~~] months to determine if the individual continues to meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(7) An ABI case management provider shall notify the local DCBS office, BISB, [~~BISU~~] and the department via an ABI Recipient's Admission Discharge DCBS Notification form - MAP 24C [~~MAP-24B~~], if the ABI recipient is:

(a) Admitted to the ABI waiver program;

(b) Terminated from the ABI waiver program;

(c)[~~(b)~~] Temporarily discharged,

(d)[~~(c)~~] Admitted to a nursing facility; or

(e)[~~(d)~~] Changing the primary provider.

(8) The department may exclude an individual from receiving an ABI waiver service for whom the aggregate cost of ABI waiver service would reasonably be expected to exceed the cost of a nursing facility service.

(9) Involuntary termination and loss of an ABI waiver program placement shall be in accordance with 907 KAR 1:563 and shall be initiated if:

(a) An individual fails to initiate an ABI waiver service within sixty (60) days of notification of potential funding without good cause shown. The individual or legal representative shall have the burden of providing documentation of good cause, including:

1. A statement signed by the recipient or legal representative;

2. Copies of letters to providers; and

3. Copies of letters from providers;

(b) An ABI recipient or legal representative fails to access the required service as outlined in the [~~assessment of need and~~] plan of care for a period greater than sixty (60) consecutive days without good cause shown.

1. The recipient or legal representative shall have the burden of providing documentation of good cause including:

a. A statement signed by the recipient or legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers; and

2. Upon receipt of documentation of good cause, the department shall grant one (1) extension in writing which shall be:

a. Sixty (60) days for an individual who does not reside in a facility; and

b. For an individual who resides in a facility, the length of the transition plan and contingent upon continued active participation in the transition plan;

(c) An ABI recipient changes residence outside the Commonwealth of Kentucky; or

(d) An ABI recipient does not meet the patient status criteria for nursing facility services established in 907 KAR 1:022.

(e) An ABI recipient is no longer able to be safely served in the community; or

(f) The ABI recipient has reached maximum rehabilitation potential.

(10) Involuntary termination of a service to an ABI recipient by an ABI provider shall require:

(a) Simultaneous notice to the department [~~BISU~~], the ABI recipient or legal representative and the case manager at least thirty (30) [~~ten (10)~~] days prior to the effective date of the action, which shall include:

1. A statement of the intended action;

2. The basis for the intended action;

3. The authority by which the action is taken; and

4. The ABI recipient's right to appeal the intended action through the provider's appeal or grievance process; and

(b) The case manager in conjunction with the provider to:

1. Provide the ABI recipient with the name, address and telephone number of each current ABI provider in the state;

2. Provide assistance to the ABI recipient in making contact with another ABI provider;

3. Arrange transportation for a requested visit to an ABI provider site;

4. Provide a copy of pertinent information to the ABI recipient or legal representative;

5. Ensure the health, safety and welfare of the ABI recipient until an appropriate placement is secured; and

6. Provide assistance to ensure a safe and effective service transition.

(11) Voluntary termination and loss of an ABI waiver program placement shall be initiated if an ABI recipient or legal representative submits a written notice of intent to discontinue services to the service provider and to the department [~~DMHMR~~].

(a) An action to terminate services shall not be initiated until thirty (30) calendar days from the date of the notice; and

(b) The ABI recipient or legal representative may reconsider and revoke the notice in writing during the thirty (30) calendar day period.

Section 4. Covered Services. (1) An ABI waiver service shall.

(a) Be prior-authorized by the department; and

(b) Be provided pursuant to the [~~assessment of needs and~~] plan of care.

(2) The following services shall be provided to an ABI recipient by an ABI waiver provider:

(a) Case management services, which shall.

1. Include initiation, coordination, implementation, and monitoring of the assessment, evaluation, intake and eligibility process;

2. Assist an ABI recipient in the identification, coordination, and facilitation of the interdisciplinary team and interdisciplinary team meetings;

3. Assist an ABI recipient and the interdisciplinary team to develop and update the [~~assessment of needs and~~] plan of care;

4. Include monitoring of the delivery of services and the effectiveness of the [~~assessment of needs~~] and plan of care, which shall:

a. Be initially developed with the ABI recipient and legal representative if appointed prior to the level of care determination;

b. Be updated within the first thirty (30) days of service and as changes or recertification occurs; and

c Include the ABI Plan of Care [~~Modification~~] form - MAP-109 [~~MAP-4098~~] being sent to the department or its designee prior to the implementation of the effective date the change occurs with the ABI recipient;

5. Include a transition plan that shall be developed within the first thirty (30) days of service and updated as changes or recertification occurs, and shall include:

a. The skills or service obtained from the ABI waiver program upon transition into the community; and

b. A listing of the community supports available upon the transition;

6. Assist an ABI recipient in obtaining a needed service outside those available by the ABI waiver;

7. Be provided by a case manager who:

a.(i) Is a registered nurse;

(ii) Is a licensed practical nurse;

(iii) Is an individual who has a bachelor's or master's degree in a human services field who meets all applicable requirements of his or her particular field including a degree in psychology, sociology, social work, rehabilitation counseling, or occupational therapy;

(iv) Is an independent case manager; or

(v) Is employed by a free-standing case management agency or an agency that provides another ABI service;

b. Has completed case management training that is consistent with the curriculum that has been approved by the department [~~DMHMR~~] prior to providing case management services;

c. Shall provide an ABI recipient and legal representative with a listing of each available ABI provider in the service area;

d. Shall maintain documentation signed by an ABI recipient or legal representative of informed choice of an ABI provider and of any change to the selection of an ABI provider and the reason for the change;

e. Shall provide a distribution of the crisis prevention and response plan, transition plan, [~~assessment of needs and~~] plan of care, and other documents within the first thirty (30) days of the service to the chosen ABI service provider and as information is updated;

f. [~~Shall not provide case management to more than forty (40) individuals at a given time irrespective of the payor source,~~

~~g. Shall not be a provider of other direct services;~~

~~h.~~] Shall provide twenty-four (24) hour telephone access to an ABI recipient and chosen ABI provider;

g [~~i.~~] Shall work in conjunction with an ABI provider selected by an ABI recipient to develop a crisis prevention and response plan which shall be:

(i) Individual-specific; and

(ii) Updated as a change occurs and at each recertification;

h.[~~j.~~] Shall assist an ABI recipient in planning resource use and assuring protection of resources;

[~~k.~~] Shall conduct two (2) face-to-face meetings with an ABI recipient within a calendar month occurring at a covered service site no more than fourteen (14) days apart, with one (1) visit quarterly at the ABI recipient's residence;

[~~l.~~] Shall visit an ABI recipient who resides outside of his or her own or family's home on a monthly basis;

k.[~~m.~~] Shall ensure twenty-four (24) hour availability of services; and

[~~n.~~] Shall ensure that the ABI recipient's health, welfare and safety needs are met; and

[~~o. Shall be supervised by an individual who is~~

~~(i) A certified case manager, a certified disability management specialist, a certified rehabilitation registered nurse, or a certified life care planner; and~~

~~(ii) Employed by or under contract with the case management provider agency; and~~]

8. Be documented by a detailed staff note which shall include:

a. The ABI recipient's health, safety and welfare;

b. Progress toward outcomes identified in the approved [~~assessment of needs and~~] plan of care;

c. The date of the service;

d. Beginning and ending time; and

e. The signature, date of signature and title of the individual providing the service;

(b) Behavior programming which shall:

1. Be the systematic application of techniques and methods to influence or change a behavior in a desired way;

2. Include a functional analysis of the ABI recipient's behavior which shall include:

a. An evaluation of the impact of an ABI on cognition and behavior;

b. An analysis of potential communicative intent of the behavior;

c. The history of reinforcement for the behavior;

d. Critical variables that precede the behavior;

e. Effects of different situations on the behavior; and

f. A hypothesis regarding the motivation, purpose and factors which maintain the behavior;

3. Include the development of a behavioral support plan which shall:

a. Be developed by the behavioral specialist;

b. Not be implemented by the behavior specialist who wrote

the plan [~~Be implemented by another ABI provider~~];

c. Be revised as necessary;

d. Define the techniques and procedures used,

e. Include the hierarchy of behavior interventions ranging from the least to the most restrictive;

f. Reflect the use of positive approaches; and

g. Prohibit the use of corporal punishment, seclusion, verbal abuse, and any procedure which denies private communication, requisite sleep, shelter, bedding, food, drink, or use of a bathroom facility;

4. Include the provision of training to other ABI providers concerning implementation of the behavioral intervention plan;

5. Include the monitoring of an ABI recipient's progress which shall be accomplished through:

a. The analysis of data concerning the frequency, intensity, and duration of a behavior; and

b. [~~The~~] Reports [~~of an ABI provider~~] involved in implementing the behavioral service plan;

6. Be provided by a behavior specialist who shall

a.(i) Be a licensed psychologist;

(ii) Be a certified psychologist with autonomous functioning;

(iii) Be a licensed psychological associate;

(iv) Be a psychiatrist;

(v) Be a licensed clinical social worker;

(vi) Be a clinical nurse specialist with a master's degree in psychiatric nursing or rehabilitation nursing; [~~or~~]

(vii) Be an advanced registered nurse practitioner (ARNP);

(viii) Be a board certified behavior analyst; or

(ix) Be a licensed professional clinical counselor; and

b. Have at least one (1) year of behavior specialist experience or provide documentation of completed coursework regarding learning and behavior principles and techniques; and

7. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; [~~and~~]

c. The signature, date and title of the behavioral specialist; and

d. A summary of data analysis and progress of the individual toward meeting goals of the services;

(c) Companion services which shall:

1. Include a nonmedical service or[~~,~~] supervision [~~or socialization~~];

2. Include assisting with but not performing meal preparation, laundry and shopping;

3. Include light housekeeping tasks which are incidental to the care and supervision of an ABI waiver service recipient;

4. Include services provided according to the approved [~~assessment of needs and~~] plan of care which are therapeutic and not diversional in nature;

5. Include accompanying and assisting an ABI recipient while utilizing transportation services;

6. Include documentation by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs~~] and plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service;

7. Not be provided to an ABI recipient who receives community residential services; and

8. Be provided by:

a. A home health agency licensed and operating in accordance with 902 KAR 20:081;

b. A community mental health center licensed and operating in accordance with 902 KAR 20.091;

c. A group home licensed and operating in accordance with 902 KAR 20.078;

d. A community habilitation program certified by the department; or

e. A staffed residence certified by the department;

(d) Community residential services which shall:

1. Include twenty-four (24) hour supervision in:

a. A community mental health center licensed and operating in accordance with 902 KAR 20:091,

b. A staffed residence that is certified by the department which shall not have greater than three (3) ABI recipients in a home rented or owned by the ABI provider; or

c. A group home which shall be licensed and operating in accordance with 902 KAR 20:078;

2. Not include the cost of room and board;

3. Be available to an ABI recipient who:

a. Does not reside with a caregiver;

b. Is residing with a caregiver but demonstrates maladaptive behavior that places him or her at significant risk of injury or jeopardy if the caregiver is unable to effectively manage the behavior or the risk it presents, resulting in the need for removal from the home to a more structured setting; or

c. Demonstrates behavior that may result in potential legal problems if not ameliorated;

4. Utilize a modular home only if the:

a. Wheels are removed;

b. Home is anchored to a permanent foundation; and

c. Windows are of adequate size for an adult to use as an exit in an emergency;

5. [~~If provided via a modular home, have 180 days October 1, 2003 to meet the modular home requirements;~~

~~6.~~] Not utilize a motor home,

6 [~~7.~~] Provide a sleeping room which ensures that an ABI recipient:

a. Does not share a room with an individual of the opposite gender who is not the ABI recipient's spouse;

b. Does not share a room with an individual who presents a potential threat; and

c. Has a separate bed equipped with substantial springs, a clean and comfortable mattress and clean bed linens as required for the ABI recipient's health and comfort;

7 [~~8.~~] Provide assistance with daily living skills which shall include:

a. Ambulating;

b. Dressing;

c. Grooming;

d. Eating;

e. Toileting;

f. Bathing;

g. Meal planning, grocery shopping and preparation;

h. Laundry;

i. Budgeting and financial matters;

j. Home care and cleaning;

k. Social skills training;

l. Reduction or elimination of a maladaptive behavior;

m. Instruction in leisure skills; and

n. Instruction in self medication;

8 [~~9.~~] Provide service and training to obtain the outcomes of the ABI recipient as identified in the approved [~~assessment of needs and~~] plan of care;

9 [~~10.~~] Provide or arrange for transportation to services, activities and medical appointments as needed;

10 [~~11.~~] Include participation in medical appointments and follow-up care as directed by the medical staff, and

11 [~~12.~~] Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service;

(e) Counseling services which:

1. Shall be designed to help an ABI waiver service recipient resolve personal issues or interpersonal problems resulting from his or her ABI;

2. Shall assist a family member in implementing an ABI waiver service recipient's approved [~~assessment of needs and~~] plan of care;

3. In a severe case, shall be provided as an adjunct to behavioral programming;

4. Shall include substance abuse or chemical dependency treatment;

5. Shall include building and maintaining healthy relationships,

6. Shall develop social skills or the skills to cope with and adjust to the brain injury;

7. Shall increase knowledge and awareness of the effects of an ABI;

8. May include a group therapy service if the service is:

a. Provided to a maximum of twelve (12) ABI recipients no more than two (2) times a week not to exceed ninety (90) minutes; and

b. Included in the recipient's approved [~~assessment of needs and~~] plan of care for:

(i) Substance abuse or chemical dependency treatment;

(ii) Building and maintaining healthy relationships;

(iii) Developing social skills;

(iv) Developing skills to cope with and adjust to a brain injury, including the use of cognitive remediation strategies consisting of the development of compensatory memory and problem solving strategies, and the management of impulsivity; and

(v) Increasing knowledge and awareness of the effects of the acquired brain injury upon the ABI recipient's functioning and social interactions;

9. Shall be provided by:

a. A psychiatrist;

b. A licensed psychologist;

c. A certified psychologist with autonomous functioning;

d. A licensed psychological associate;

e. A licensed clinical social worker;

f. A clinical nurse specialist with a master's degree in psychiatric nursing;

g. An advanced registered nurse practitioner (ARNP); or

h. A certified alcohol and drug counselor;

i. A licensed marriage and family therapist; or

j. A licensed professional clinical counselor; and

10. Shall be documented by a detailed staff note which shall include:

a. Progress toward the goals and objectives established in the plan of care;

b. The date of the service;

c.[~~b.~~] The beginning and ending time; and

d.[~~c.~~] The signature, date of signature and title of the individual providing the service;

(f) Occupational therapy which shall be:

1. A physician-ordered evaluation of an ABI recipient's level of functioning by applying diagnostic and prognostic tests;

2. Physician-ordered services in a specified amount and duration to guide an ABI recipient in the use of therapeutic, creative, and self-care activities to assist the ABI recipient in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by an occupational therapist or an occupational therapy assistant if supervised by a licensed occupation therapist in accordance with 201 KAR 28:130, and

5. Documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service;

(g) Personal care services which shall:

1. Include the retraining of an ABI waiver service recipient in the performance of an activity of daily living by using repetitive, consistent and ongoing instruction and guidance;

2. Be provided by:

a. An adult day health care center licensed and operating in accordance with 902 KAR 20.066; or

b. A home health agency licensed and operating in accordance with 902 KAR 20:081;

3. Include the following activities of daily living:

a. Eating, bathing, dressing or personal hygiene;

b. Meal preparation; and

c. Housekeeping chores including bed-making, dusting and vacuuming;

4. Be documented by a detailed staff note which shall include:

a. Progress toward goal and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. Beginning and ending time; and

d. The signature, date and title of the individual providing the service; and

5. Not be provided to an ABI recipient who receives community residential services;

(h) A respite service which shall:

1. Be provided only to an ABI recipient unable to administer self-care;

2. Be provided by a:

a. Nursing facility;

b. Community mental health center;

c. Home health agency;

d. Group home agency;

e. Staffed residence agency; or

f. Community habilitation program;

3. Be provided on a short-term basis due to absence or need for relief of an individual providing care to an ABI recipient;

4. Be limited to 168 hours in a six (6) month period unless an individual's normal caregiver is unable to provide care due to a:

a. Death in the family;

b. Serious illness; or

c. Hospitalization;

5. Not be provided to an ABI recipient who receives community residential services;

6. Not include the cost of room and board if provided in a nursing facility; and

7. Be documented by a detailed staff note which shall include:

a. The date of the service;

b. The beginning and ending time; and

c. The signature, date of signature and title of the individual providing the service;

(i) Speech, hearing and language services which shall be:

1. A physician-ordered evaluation of an ABI recipient with a speech, hearing or language disorder;

2. A physician-ordered habilitative service in a specified amount and duration to assist an ABI recipient with a speech and language disability in obtaining the highest possible level of functioning;

3. Exclusive of maintenance or the prevention of regression;

4. Provided by a speech therapist; and

5. Documented by a detailed staff note which shall include:

a. Progress toward goals and objectives identified in the approved [~~assessment of needs and~~] plan of care;

b. The date of the service;

c. The beginning and ending time; and

d. The signature, date and title of the individual providing the service;

(j) Structured day program services which shall:

1. Be provided by:

a. An adult day health care center which is certified by the department and licensed and operating in accordance with 902 KAR 20.066;

b. An outpatient rehabilitation facility which is certified by the department and licensed and operating in accordance with 902 KAR 20:190;

c. A community mental health center licensed and operating in accordance with 902 KAR 20:091;

d. A community habilitation program certified by the department;

e. A sheltered employment program certified by the department; or

f. A therapeutic rehabilitation program certified by the department;

2. Be to rehabilitate, retrain and reintegrate an individual into the community;

3. Not exceed a staffing ratio of five (5) ABI recipients per one (1) staff person, unless an ABI recipient requires individualized special service;

4. Include the following services:

a. [~~Social skills training;~~

~~b.~~] Sensory or motor development,

b [c.] Reduction or elimination of a maladaptive behavior;
c [d.] Prevocational; or
d [e.] Teaching concepts and skills to promote independence including:
(i) Following instructions;
(ii) Attendance and punctuality;
(iii) Task completion;
(iv) Budgeting and money management;
(v) Problem solving; or
(vi) Safety;
5. Be provided in a nonresidential setting;
6. Be developed in accordance with an ABI waiver service recipient's overall approved [assessment of needs and] plan of care;
7. Reflect the recommendations of an ABI waiver service recipient's interdisciplinary team;
8. Be appropriate:
a. Given an ABI waiver service recipient's age, level of cognitive and behavioral function and interest;
b. Given an ABI waiver service recipient's ability prior to and since his or her injury; and
c. According to the approved [assessment of needs and] plan of care and be therapeutic in nature and not diversional;
9. Be coordinated with occupational, speech, or other rehabilitation therapy included in an ABI waiver service recipient's [assessment of needs and] plan of care;
10. Provide an ABI waiver service recipient with an organized framework within which to function in his or her daily activities;
11. Entail frequent assessments of an ABI waiver service recipient's progress and be appropriately revised as necessary; and
12. Be documented by a detailed staff note which shall include:
a. Progress toward goal and objectives identified in the approved [assessment of needs and] plan of care;
b. The date of the service;
c. The beginning and ending time; and
d. The signature, date and title of the individual providing the service;
(k) Supported employment which shall be:
1. Intensive, ongoing services for an ABI recipient to maintain paid employment in an environment in which an individual without a disability is employed;
2. Provided by a:
a. Supported employment provider;
b. Sheltered employment provider; or
c. Structured day program provider;
3. Provided one-on-one;
4. Unavailable under a program funded by either the Rehabilitation Act of 1973 (29 U.S.C. Chapter 16) or Pub.L. 99-457 (34 C.F.R. Parts 300 to 399), proof of which shall be documented in the ABI recipient's file;
5 [4.] Limited to forty (40) hours per week alone or in combination with structured day services;
6 [5.] An activity needed to sustain paid work by an ABI recipient receiving waiver services including supervision and training;
7 [6.] Exclusive of work performed directly for the supported employment provider; and
8 [7.] Documented by a time and attendance record which [with] shall include:
a. Progress towards the goals and objectives identified in the plan of care;
b. The date of service;
c [b.] The beginning and ending time; and
d [c.] The signature, date and title of the individual providing the service;
(l) Specialized medical equipment and supplies which shall:
1. Include durable and nondurable medical equipment, devices, controls, appliances or ancillary supplies;
2. Enable an ABI recipient to increase his ability to perform daily living activities or to perceive, control or communicate with the environment;
3. Be ordered by a physician and submitted on a Request for Equipment form - MAP-95 [form] and include three (3) estimates for vision and hearing;
4. Include equipment necessary to the proper functioning of specialized items;
5. Not be available through the department's durable medical equipment, vision or hearing programs;
6. Not be necessary for life support;
7. Meet applicable standards of manufacture, design and installation; and
8. Exclude those items which are not of direct medical or remedial benefit to an ABI recipient; or
(m) Environmental modifications which shall.
1. Be provided in accordance with applicable state and local building codes;
2. Be provided to an ABI recipient if:
a. Ordered by a physician;
b. Prior-authorized by the BISB [department];
c. Submitted on a Request for Equipment form - MAP-95 [form] by a case manager or support broker;
d. Specified in an ABI recipient's approved [assessment of needs and] plan of care;
e. Necessary to enable an ABI recipient to function with greater independence within his or her home; and
f. Without the modification, the ABI recipient would require institutionalization;
3. Not include a vehicle modification or an electronic monitoring system;
4. Be limited to no more than $2000 [$1000] for an ABI recipient in a twelve (12) [six (6)] month period; and
5. If entailing:
a. Electrical work, be provided by a licensed electrician; or
b. Plumbing work, be provided by a licensed plumber.

Section 5. Exclusions of the Acquired Brain Injury Waiver Program. A condition included in the following list shall not be considered an acquired brain injury requiring specialized rehabilitation:
(1) A stroke treatable in a nursing facility providing routine rehabilitation services;
(2) A spinal cord injury for [in] which there is no known or obvious injury to the intercranial central nervous system;
(3) Progressive dementia or another [mentally impairing] condition related to mental impairment that is of a chronic degenerative nature, including [such as] senile dementia, organic brain disorder, Alzheimer's Disease, alcoholism or another addiction;
(4) A depression or a psychiatric disorder in which there is no known or obvious central nervous system damage;
(5) A birth defect;
(6) Mental retardation without an etiology to an acquired brain injury; [or]
(7) A condition which causes an individual to pose a level of danger or an aggression which is unable to be managed and treated in a community; or
(8) Determination that the recipient has met his or her maximum rehabilitation potential

Section 6. Incident Reporting Process. (1) An incident shall be documented on an incident report form.
(2) There shall be three (3) classes of incidents as follows:
(a) A Class I incident which shall:
1. Be minor in nature and not create a serious consequence;
2. Not require an investigation by the provider agency;
3. Be reported to the case manager or support broker within twenty-four (24) hours;
4. Be reported to the guardian as directed by the guardian; and
5. Be retained on file at the provider and case management or support brokerage [manager] agency;
(b) A Class II incident which shall:
1. Be serious in nature;
2. Include a medication error;
3. Involve the use of a physical or chemical restraint;
4. Require an investigation which shall be initiated by the provider agency within twenty-four (24) hours of discovery and shall involve the case manager; and
5 [3.] Be reported to the following by the provider agency:
a. The case manager or support broker within twenty-four (24) hours of discovery;
b. The guardian within twenty-four (24) hours of discovery; and

c. BISB [~~BISU~~], within twenty-four (24) hours of discovery followed by a complete written report of the incident investigation and follow-up within ten (10) calendar days of discovery; and

(c) A Class III incident which shall:

1. Be grave in nature;

2. Involve suspected abuse, neglect, or exploitation;

3. Involve a medication error which requires a medical intervention;

4. Be a death;

5. Be immediately investigated by the provider agency, and the investigation shall involve the case manager or support broker; and

6.[3.] Be Reported [~~to the following~~] by the provider agency to:

a. The case manager or support broker within eight (8) hours of discovery;

b. DCBS, immediately upon discovery, if involving suspected abuse, neglect, or exploitation in accordance with KRS Chapter 209;

c. The guardian within eight (8) hours of discovery; and

d. BISB [~~BISU~~], within eight (8) hours of discovery, followed by a complete written report of the incident investigation and follow-up within seven (7) calendar days of discovery. If an incident occurs after 5 p.m. EST on a weekday or occurs on a weekend or holiday, notification to BISB [~~BISU~~] shall occur on the following business day. The following documentation with a complete written report shall be submitted for a death:

(i) A current plan of care;

(ii) A current list of prescribed medications including PRN medications;

(iii) A current crisis plan;

(iv) Medication Administration Review (MAR) forms for the current and previous month;

(v) Staff notes from the current and previous month including details of physician and emergency room visits;

(vi) Any additional information requested by the department;

(vii) A coroner's report; and

(viii) If performed, an autopsy report.

Section 7. ABI Waiting List. (1) An individual between the age of twenty-one (21) to sixty-five (65) years of age applying for an ABI waiver service shall be placed on a statewide waiting list which shall be maintained by the department.

(2) In order to be placed on the ABI waiting list, an individual shall submit to the department a completed Acquired Brain Injury Waiver Services Program Application form - MAP-26, and an Acquired Brain Injury Waiver Services [~~Program Physician Certification~~] form - MAP-10 [~~MAP-4099~~].

(3) The order of placement on the waiting list shall be determined by chronological date of receipt of the Acquired Brain Injury Waiver Services [~~Program Physician Certification~~] form - MAP-10 [~~MAP-4099~~] and by category of need of the individual as follows:

(a) Emergency. An immediate service is indicated as determined by:

1. The individual currently is demonstrating behavior related to his acquired brain injury that places the recipient or caregiver or others at risk of significant harm; or

2. The individual is demonstrating behavior related to his acquired brain injury which has resulted in his arrest; or

(b) Nonemergency.

(4) In determining chronological status, the original date of receipt of the Acquired Brain Injury Waiver Services Program Application form - MAP-26 and the Acquired Brain Injury Waiver Services [~~Program Physician Certification~~] form - MAP-10 [~~MAP-4099~~] shall be maintained and not change if an individual is moved from one (1) category of need to another.

(5) A written statement by a physician or other qualified mental health professional shall be required to support the validation of risk of significant harm to a recipient or caregiver.

(6) Written documentation by law enforcement or court personnel shall be required to support the validation of a history of arrest.

(7) If multiple applications are received on the same date, a lottery shall be held to determine placement on the waiting list within each category of need.

(8) A written notification of placement on the waiting list shall be mailed to the individual or his legal representative and case management provider if identified.

(9) Maintenance of the ABI waiting list shall occur as follows:

(a) The department shall, at a minimum, annually update the waiting list during the birth month of an individual;

(b) An individual or his legal representative and his case management provider shall be contacted in writing to verify the accuracy of the information on the waiting list and his continued desire to pursue placement in the ABI program; and

(c) The requested data shall be received by the department within thirty (30) days from the date on the written notice cited in subsection (8) of this section.

(10) Reassignment of category of need shall be completed based on the updated information and validation process.

(11) An individual or legal representative may submit a request for consideration of movement from one category of need to another at any time an individual's status changes.

(12) An individual shall be removed from the ABI waiting list if:

(a) After a documented attempt, the department is unable to locate the individual or his legal representative;

(b) The individual is deceased;

(c) The individual or his legal representative refuses the offer of ABI placement for services and does not request to be maintained on the waiting list; or

(d) An ABI placement for services offer is refused by the individual or legal representative and he or she does not, without good cause, complete the Acquired Brain Injury Waiver Services Program Application form - MAP-26 application within sixty (60) days of the placement allocation date.

1. The individual or his legal representative shall have the burden of providing documentation of good cause including:

a. A signed statement by the individual or the legal representative;

b. Copies of letters to providers; and

c. Copies of letters from providers.

2. Upon receipt of documentation of good cause, the department shall grant one (1) sixty (60) day extension in writing.

(13) If an individual is removed from the ABI waiting list, written notification shall be mailed by the department to the individual or his legal representative and the ABI case manager.

(14) The removal of an individual from the ABI waiting list shall not prevent the submittal of a new application at a later date.

(15) Potential funding allocated for services for an individual shall be based upon:

(a) The individual's category of need; and

(b) The individual's chronological date of placement on the waiting list.

Section 8. Consumer Directed Option. (1) Covered services and supports provided to an ABI recipient participating in CDO shall include a home and community support service which shall:

(a) Be available only under the consumer directed option;

(b) Be provided in the consumer's home or in the community;

(c) Be based upon therapeutic goals and not diversional in nature;

(d) Not be provided to an individual if the same or similar service is being provided to the individual via non-CDO ABI services; and

(e)1. Be respite for the primary caregiver; or

2. Be supports and assistance related to chosen outcomes to facilitate independence and promote integration into the community for an individual residing in his or her own home or the home of a family member and may include:

a. Routine household tasks and maintenance;

b. Activities of daily living;

c. Personal hygiene;

d. Shopping;

e. Money management;

f. Medication management;

g. Socialization;

h. Relationship building;

i. Meal planning;

j. Meal preparation;

k. Grocery shopping; or

l. Participation in community activities.

(2) To be covered, a CDO service shall be specified in a consumer's plan of care.

(3) Reimbursement for a CDO service shall not exceed the department's allowed reimbursement for the same or a similar service provided in a non-CDO ABI setting.

(4) A consumer, including a married consumer, shall choose providers and the choice of CDO provider shall be documented in his or her plan of care.

(5) A consumer may designate a representative to act on the consumer's behalf. The CDO representative shall:

(a) Be twenty-one (21) years of age or older;

(b) Not be monetarily compensated for acting as the CDO representative or providing a CDO service; and

(c) Be appointed by the consumer on a MAP-2000 form.

(6) A consumer may voluntarily terminate CDO services by completing a MAP-2000 and submitting it to the support broker.

(7) The department shall immediately terminate a consumer from CDO services if:

(a) Imminent danger to the consumer's health, safety, or welfare exists; or

(b) The consumer fails to pay patient liability.

(8) The department may terminate a consumer from CDO services if it determines that the consumer's CDO provider has not adhered to the plan of care.

(9) Prior to a consumer's termination from CDO services, the support broker shall:

(a) Notify the assessment or reassessment service provider of potential termination;

(b) Assist the consumer in developing a resolution and prevention plan;

(c) Allow at least thirty (30), but no more than ninety (90), days for the consumer to resolve the issue, develop and implement a prevention plan, or designate a CDO representative;

(d) Complete and submit to the department a MAP-2000 form terminating the consumer from CDO services if the consumer fails to meet the requirements in paragraph (c) of this subsection; and

(e) Assist the consumer in transitioning back to traditional ABI services.

(10) Upon an involuntary termination of CDO services, the department shall:

(a) Notify a consumer in writing of its decision to terminate the consumer's CDO participation; and

(b) Except in a case where a consumer failed to patient liability, inform the consumer of the right to appeal the department's decision in accordance with Section 9 of this administrative regulation.

(11) A CDO provider:

(a) Shall be selected by the consumer;

(b) Shall submit a completed Kentucky Consumer Directed Option Employee Provider Contract to the support broker;

(c) Shall be eighteen (18) years of age or older;

(d) Shall be a citizen of the United States with a valid Social Security number or possess a valid work permit if not a U.S. citizen;

(e) Shall be able to communicate effectively with the consumer, consumer representative, or family;

(f) Shall be able to understand and carry out instructions;

(g) Shall be able to keep records as required by the consumer;

(h) Shall submit to a criminal background check conducted by the Administrative Office of the Courts if the individual is a Kentucky resident and equivalent out-of-state agency if the individual resided or worked outside Kentucky during the year prior to selection as a provider of CDO services;

(i) Shall submit to a check of the central registry maintained in accordance with 922 KAR 1:470 and not be found on the registry;

1. A consumer may employ a provider prior to a central registry check result being obtained for up to fourteen (14) days; and

2. If a consumer does not obtain a central registry check result within fourteen (14) days of employing a provider, the consumer shall cease employment of the provider until a favorable result is obtained;

(j) Shall submit to a check of the nurse aid abuse registry maintained in accordance with 906 KAR 1:100 and not be found on the registry;

(k) Shall not have pled guilty or been convicted of committing a sex crime or violent crime as defined in KRS 17.165 (1) through (3);

(l) Shall complete training on the reporting of abuse, neglect or exploitation in accordance with KRS 209.030 or 620.030 and on the needs of the consumer;

(m) Shall be approved by the department;

(n) Shall maintain and submit timesheets documenting hours worked; and

(o) May be a friend, spouse, parent, family member, other relative, employee of a provider agency, or other person hired by the consumer.

(12) A parent, parents combined, or a spouse shall not provide more than forty (40) hours of services in a calendar week (Sunday through Saturday) regardless of the number of family members who receive waiver services.

(13)(a) The department shall establish a budget for a consumer based on the individual's historical costs minus five (5) percent to cover costs associated with administering the consumer directed option. If no historical cost exists for the consumer, the consumer's budget shall equal the average per capita historical costs of ABI recipients minus five (5) percent.

(b) Cost of services authorized by the department for the individual's prior year plan of care but not utilized may be added to the budget if necessary to meet the individual's needs.

(c) The department may adjust a consumer's budget based on the consumer's needs and in accordance with paragraphs (d) and (e) of this subsection.

(d) A consumer's budget shall not be adjusted to a level higher than established in paragraph (a) of this subsection unless:

1. The consumer's support broker requests an adjustment to a level higher than established in paragraph (a) of this subsection; and

2. The department approves the adjustment.

(e) The department shall consider the following factors in determining whether to allow for a budget adjustment:

1. If the proposed services are necessary to prevent imminent institutionalization;

2. The cost effectiveness of the proposed services; and

3. Protection of the consumer's health, safety, and welfare.

(14) Unless approved by the department pursuant to subsection (13)(b) through (e) of this section, if a CDO service is expanded to a point in which expansion necessitates a budget allowance increase, the entire service shall only be covered via a traditional (non-CDO) waiver service provider.

(15) A support broker shall:

(a) Provide needed assistance to a consumer with any aspect of CDO or blended services;

(b) Be available to a consumer twenty-four (24) hours per day, seven (7) days per week;

(c) Comply with applicable federal and state laws and requirements;

(d) Continually monitor a consumer's health, safety, and welfare; and

(e) Complete or revise a plan of care using person-centered planning principles.

(17) For a CDO participant, a support broker may conduct an assessment or reassessment.

Section 9. Appeal Rights. (1) An appeal of a department decision regarding a Medicaid beneficiary based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.

(2) An appeal of a department decision regarding Medicaid eligibility of an individual based upon an application of this administrative regulation shall be in accordance with 907 KAR 1.560.

(3) An appeal of a department decision regarding a provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.

Section 10 [9.] Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "MAP-109 Prior Authorization for Waiver Services", March 2007 edition;

(b) "MAP 24C, SCL or ABI Admission Discharge Department for Community Based Services (DCBS) Notification", April 2007 edition;

(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application", May 2003 edition;

(d) "MAP-95, Request for Equipment Form", June 2007 edition;

(e) "MAP-10 Waiver Services", January 2007 edition;

(f) "Incident Report", April 2007 edition;

(g) "MAP-2000, Initiation/Termination of Consumer Directed Option (CDO)", March 2007 edition

(h) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition;

(i) "Rancho Los Amigos Level of Cognitive Function Scale", November 1974 edition;

(j) "MAP-351, Medicaid Waiver Assessment", March 2007 edition;

(k) "Mayo-Portland Adaptability Inventory-4", March 2003 edition; and

(l) "Person Centered Planning: Guiding Principles", March 2005 edition. ~~["MAP-011, Acquired Brain Injury Assessment of Needs and Plan of Care, December 2003 edition";~~

~~(b) "MAP-24B, Acquired Brain Injury (ABI) Recipient's Admission Discharge Department for Community Based Services (DCBS) Notification, May 2003 edition",~~

~~(c) "MAP-26, Acquired Brain Injury (ABI) Waiver Services Program Application, May 2003 edition";~~

~~(d) "MAP-95, Request for Equipment Form, September 2002 edition";~~

~~(e) "MAP-552K, Department for Community Based Services Notice of Availability of Income for Long Term CareAWaiver Agency/Hospice, January 2001 edition";~~

~~(f) "MAP-4096, Acquired Brain Injury Waiver Services Program Applicant/Recipient Memorandum of Understanding, May 2003 edition";~~

~~(g) "MAP-4098, Acquired Brain Injury Plan of Care Modification, May 2003 edition";~~

~~(h) "MAP-4099, Acquired Brain Injury (ABI) Waiver Services Program Physician Certification, May 2003 edition",~~

~~(i) "Incident Report, December 2003 edition",~~

~~(j) "MAP-4102, Freedom of Choice of Home and Community Based Waiver Service Providers, May 2003 edition",~~

~~(k) "MAP-350, Long Term Care Facilities and Home and Community Based Program Certification Form, January 2000 edition"; and~~

~~(l) "Rancho Los Amigos Level of Cognitive Function Scale, November 1974.]~~

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

GLENN JENNINGS, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 2, 2007
FILED WITH LRC: July 12, 2007 at 10 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Stuart Owen or Stephanie Brammer-Barnes

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the coverage provisions relating to home and community based waiver services provided to an individual with an acquired brain injury as an alternative to nursing facility services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment establishes a consumer-directed option services program that allows Medicaid's ABI waiver participants to assist with the design of their programs, choose their providers of services, and direct the delivery of services to meet their needs. This amendment also requires ABI providers' employees and volunteers to submit to a child abuse/neglect central registry check and a check of the nurse aide abuse registry, and not be listed on either registry for the purpose of employment or service as a volunteer. This amendment further establishes what types of documentation must be provided to the department in case of death of an ABI recipient. Additionally, this amendment requires case management providers to complete and submit to the department a Mayo-Portland Adaptability Inventory-4 for each ABI recipient within thirty (30) days of admission into the ABI program, annually thereafter, and upon discharge

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to implement the consumer-directed option services program established by KRS 205.5606.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of KRS 205.2605 and 205.5606 by implementing the consumer-directed option services program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes by implementing a consumer-directed option services program for ABI recipients in accordance with KRS 205.5605 and 5606.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect Medicaid's ABI waiver recipients who opt to participate in the consumer-directed services program. Currently, there are approximately 120 members enrolled in the ABI waiver program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Medicaid ABI waiver recipients may opt

to participate in the consumer directed option services program. An individual who chooses to participate will be assisted by a support broker. Individuals who wish to provide consumer directed services must meet basic requirements including: complete and submit a consumer directed option provider agreement to the consumer's support broker, be at least eighteen (18) years of age, pass required background checks, be able to communicate effectively, and report any suspected abuse, neglect, or exploitation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). This amendment is required by KRS 205.5606 and does not impose a cost on regulated entities.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An ABI waiver recipient who enrolls in the consumer directed option program will be able to choose their providers of non-medical services, in their approved plan of care, as well as how and when they will receive the services. This initiative allocates a monthly budgeted allowance to consumers to spend on nonresidential and non-medical home and community based services and supports. CDO providers may include family members, friends, neighbors, or others recruited by the consumer including provider agencies. CDO providers will be reimbursed for providing services to CDO consumers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time.

(b) On a continuing basis: Pursuant to KRS 205.5606(1), the budget allowance made available each month to consumers for purchasing covered services and supports shall not exceed the amount that would have been allocated in the traditional Medicaid program for nonresidential and nonmedical services for the consumer. Additionally, the Department for Medicaid Services (DMS) is establishing an expenditure cap per consumer in an attempt to preserve some funding to cover administrative costs; however, DMS is absorbing some administrative cost (support brokers and fiscal intermediaries). Utilization, indeterminable at this time, could increase significantly given the enhanced access individuals will have to providers. Therefore, the Department for Medicaid Services (DMS) is unable to determine a precise fiscal impact at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees or funding will be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: ABI providers, as a result of an amendment to this administrative regulation, will be required to obtain a child abuse/neglect central registry check for potential staff and volunteers. Central registry checks cost $10.00 per individual.

(9) Tiering: Is tiering applied? Consumer-directed option (CDO) providers are subject to less strict provider qualifications than non-CDO providers in order to enhance recipient access to services and to facilitate greater recipient independence among recipients in accordance with KRS 205.5606.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment will affect each Medicaid ABI waiver recipient who opts to participate in the consumer directed option program.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is required by KRS 205.5605 and 205.5606.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will not generate revenue for state or local government during the first year of program administration.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will not generate revenue for state or local government during subsequent years of program administration.

(c) How much will it cost to administer this program for the first year? This amendment will not result in additional costs during the first year of program administration.

(d) How much will it cost to administer this program for subsequent years? This amendment will not result in additional costs during subsequent years of program administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: No additional expenditures are necessary to implement this amendment.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Aging and Independent Living
Division of Quality Living
(Amendment)

910 KAR 1:240. Certification of assisted-living [~~assisted living~~] communities.

RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729, 209.030, 216.300(1), 216.595, 216.789, 216.793 [~~194A.700-194A.729, 42 U.S.C. 3029~~]

STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.707(1) requires the cabinet [~~for Health Services~~] to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities that shall include an on-site visit and procedures [~~for the certification of assisted-living communities. This administrative regulation establishes a process~~] related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B. This administrative regulation establishes the certification of assisted-living communities.

Section 1. Definitions. (1) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted-living community.

(2) "Activities of daily living" is defined by KRS 194A.700(1).

(3) "Assisted-living community" is defined by KRS194A.700(3).

(4) "Client" is defined by KRS 194A.700(4).

(5) "Certification review" means the process in which the de-

partment begins certification of an assisted-living community through an application review process.

(6) "Functional needs assessment" means client data as established in KRS 194A.713(1)(a).

(7) "Instrumental activities of daily living" is defined by 194A.700(7).

(8) "Living unit" is defined by KRS 194A.700(8).

(9) "Temporary health condition" means a condition in which a client:

(a) Is expected to regain mobility:

1. In accordance with KRS 194A.711; and

2. Before or after entering a lease agreement; or

(b) Receives hospice or similar end-of-life services and has been under a lease agreement prior to receiving those services.

Section 2. Application for Initial Certification Review. (1) For initial certification an applicant shall, within at least sixty (60) days prior to a planned opening, file with the department:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) A copy of a blank lease agreement and any documentation incorporated by reference into the lease agreement;

(c) A copy of written material used to market the proposed assisted-living community, including material that markets a special programming, staffing or training in accordance with KRS 194A.715(1)(c).

(d) The floor plan of the proposed assisted-living community identifying the:

1. Living unit including the requirements of KRS 194A.703(1);

2. Central dining;

3. Laundry facility; and

4. Central living room; and

(e) A nonrefundable certification fee:

1. Assessed by the department in accordance with KRS 194A.707(6);

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) If an initial certification occurs after the effective date of this administrative regulation and before or after the required annual certification date specified in Section 3(1)(b) of this administrative regulation, the certification fee shall be prorated:

(a) Twenty (20) dollars per living unit or the $300 minimum set forth in KRS 194A.707(6); and

(b) Up to the annual certification date for the first year.

Section 3. Application for Annual Certification Review. (1) The department shall renew a certification if an assisted-living community:

(a) Is certified as specified in Section 5 of this administrative regulation; and

(b) Submits to the department annually by July 1:

1. A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

2. The documentation of Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

3. The nonrefundable certification fee of Section 2(e) of this administrative regulation.

(2) If an annual certification is due after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a) and (b) of this administrative regulation.

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall apply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Within sixty (60) days prior to the increase.

(2) If the increase in units occur after the effective date of this administrative regulation and before or after the required annual certification date, the certification fee shall be prorated as specified in Section 2(2)(a) and (b) of this administrative regulation.

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) In accordance with Section 3(1) of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3(1) of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an unannounced on-site review within one (1) year of receipt of the DAIL-ALC-1, Assisted-Living Community Certification Application.

Section 7. On-Site Review of an Assisted-Living Community. (1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of employment records including:

1. An employment application that shall contain a criminal record check notice pursuant to KRS 216.793(1);

2. A criminal records check that shall be:

a. Requested in accordance with KRS 216.789(3); and

b. Applied for within seven (7) days from date of an employee's hire;

3. Verification that an employee reads and agrees to the policy and procedures of the assisted-living community regarding communicable disease pursuant to KRS 194A.717(4); and

4. Documentation of:

a. Employee orientation completed within ninety (90) days of the date of hire; and

b. In-service education:

(i) Pursuant to KRS 194A.719; and

(ii) That shall be provided on an annual basis as required for an employee to perform his or her assigned duties;

(b) Verification of documentation of compliance in accordance with KRS 194A.703;

(c) Review of client records including:

1. A completed client functional needs assessment to ensure that the client meets the eligibility for assisted-living criteria:

a. Pursuant to KRS 194A.711; and

b. Prior to finalizing a lease agreement;

2. A functional needs assessment that reflects a client's ongoing ability pursuant to KRS 194A.711 to perform activities of daily living and instrumental activities of daily living;

3. Current personal preferences and social factors; and

4. A signed lease with all attachments;

(d) Review of an assisted-living community's policies and procedures:

1. In accordance with KRS 194A.700 through 194A.729; and

2. With a DAIL-ALC-2, Assisted-Living Community Certification Checklist;

(e) Review of an assisted-living community's service provision and practices related to:

1. Provisions of KRS 194A.705;

2. Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1),

3 Documentation:

a. At the department's request;

b. From a licensed health care professional defined by KRS 216.300(1);

c Requested of the client by the assisted-living community; and

d. That states:

(i) The client has a temporary health condition pursuant to KRS 194A.711(1); and

(ii) How the assisted-living community shall ensure that the client is not a danger, if hospice or similar end-of-life services are provided; and

4. Special programming, pursuant to KRS 194A.713(11), 194A.715(1)(c), and 194A.719(10), that may be provided to a client of an assisted-living community provided the assisted-living community:

a. Ensures a client's functional needs assessment that:

(i) Reflects the client's ongoing abilities as specified in paragraph (c)2 of this subsection; and

(ii) Shall be updated at least annually; and

b. Complies with the requirements of KRS 216 595; and

(f) Review of any documentation or records to ensure compliance pursuant to KRS 194A 707(7).

(3) The department may, pursuant to KRS 194A.707(7), request additional information to ensure an assisted-living community complies with KRS 194A.700-729 and 216.789(1).

(4) Prior to completion of the on-site visit at the assisted-living community, a department representative shall schedule and hold a meeting to discuss the preliminary results of the on-site visit between:

(a) The assisted-living community manager or designee; and

(b) Department representative.

Section 8. Assisted-Living On-Site Review Findings. (1) The department shall:

(a) Document any noncompliance of KRS 194A.700 through 729 or this administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-Living Community Certification Checklist; and

(b) Submit the finding of noncompliance to the applicant:

1. On a statement of noncompliance located on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction; and

2. Within fifteen (15) business days upon completion of the on-site review

(2) The assisted-living community shall complete a plan of correction located on the DAIL-ALC-3, Statement of Noncompliance and Plan of Correction and submit the form to the department:

(a) For the elimination or correction of the non-compliance;

(b) Within fifteen (15) business days of receipt of the notice of non-compliance; and

(c) That shall specify the dates by which the non-compliance shall be corrected.

(3) The department shall notify the applicant in writing whether the plan of correction is approved or not approved:

(a) Within fifteen (15) business days of receipt of the plan of correction; and

(b) With explanation for actions taken

(4)(a) If the plan of correction is approved and the department determines a follow-up on-site review is unnecessary, the department shall issue a certification certificate

(b) The assisted-living community shall post the certificate as specified in subsection (8) of this section.

(5) If the plan of correction is not approved, the applicant shall submit to the department an amended plan of correction within fifteen (15) business days of receipt of the nonapproved plan of correction.

(6) If the department determines after reviewing the amended plan of correction that certification shall be denied, the department shall notify the assisted-living community within ten (10) business days of the determination and with the:

(a) Opportunity for an informal dispute resolution meeting:

1 Between the:

a. Department; and

b A representative of the assisted-living community;

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address an issue of noncompliance in question, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 11 of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) The department may conduct additional on-site visits pursuant to KRS 194A.707(7).

Section 9. Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:

(a) An assisted-living community knowingly employs any individual convicted of a charge specified in KRS 216 789(1) or 216.789(2) disclosed by:

1. The individual's employment application; or

2. A criminal records check; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 8(2) through (7) of this administrative regulation.

(2) Certification may be denied or revoked if an assisted-living community:

(a) Fails to apply for certification as specified in Section 2(1), 3(1), or 4(1) of this administrative regulation;

(b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification Application more than fifteen (15) days late for two (2) consecutive years; or

(c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community Certification Application within thirty (30) days of July 1 annually.

Section 10 Collection of Fees and Fines. (1) An entity in violation of KRS 194A 723 shall make a check payable to the Kentucky State Treasurer and mail it to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) A party aggrieved by a determination of the department shall appeal the determination or the fine in accordance with KRS Chapter 13B.

(3) The fee established for the review of the architectural drawings, lease agreement, and notification of conditional compliance to a lender, pursuant to KRS 194A.729, shall be $250.

Section 11. Right to Appeal Decision and Hearings. (1) If the department determines that a certification shall be denied or revoked, as specified in Section 9 of this administrative regulation, the applicant shall be notified of the right to appeal the determination:

(a) By certified mail; and

(b) Within ten (10) days of determination.

(2) An applicant shall make a request for an administrative hearing in writing to the department within thirty (30) days of receipt of a written notice of,

(a) Nonapproval of the amended plan of correction; or

(b) Denial or revocation of certification.

(3) Upon receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.

(4) The date the denial or revocation of certification shall be effective upon the final decision of the secretary pursuant to KRS Chapter 13B.

(5) If the denial or revocation is upheld by the secretary, the assisted-living community shall cease to operate and the assisted-living community shall:

(a) Assist clients in locating alternate living arrangements pursuant to KRS 194A.705(4); and

(b) Ensure that all clients are relocated within thirty (30) days of final notice of revocation or denial.

(6) The commissioner of the department shall have the authority to extend the time limit specified in subsection 5(b) of this section, not to exceed an additional fifteen (15) days.

Section 12. Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "DAIL-ALC-1 Assisted-Living Community Certification Application", edition 11/07;

(b) "DAIL-ALC-2 Assisted-Living Community Certification Check List", edition 11/07; and

(c) "DAIL-ALC-3 Assisted-Living Community Statement of Noncompliance and Plan of Correction", edition 11/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

~~[Section 1. Definitions. (1) "Applicant" means the owner or manager who represents a business seeking initial or annual certification as an assisted living community.~~

~~(2) "Assisted living community" is defined in KRS 194A.700.~~

~~(3) "Client" is defined in KRS 194A.700.~~

~~(4) "Living unit" is defined in KRS 194A.700.~~

~~(5) "Office" means Office of Aging Services as defined in KRS 194A.700.~~

~~(6) "Plan" means an assisted living community's written plan for correcting noncompliance with the provisions of KRS 194A.707 or this administrative regulation.~~

~~(7) "Cabinet" means Cabinet of Health Services.~~

~~Section 2. Certification of Assisted Living Community. (1) Representatives of the office conducting certification reviews shall not disclose information made confidential by state or federal law or regulation. A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.~~

~~(2)(a) An applicant seeking initial certification for an assisted living community shall submit a completed application at least sixty (60) days prior to the planned opening.~~

~~(b) An applicant seeking annual certification of an assisted living community shall apply at least sixty (60) days prior to the expiration date of the current certification.~~

~~(c) Each applicant shall file an OAS-ALC-1 Assisted Living Community Certification Application, with the Cabinet for Health Services, Office of Aging Services, 275 East Main Street, Frankfort, Kentucky 40621.~~

~~(d) The application shall require the following:~~

~~1. The name, address and contact person for the owner and, if applicable, for the management company with primary contractual responsibilities for operating the assisted living community;~~

~~2. The mailing address and physical address of the assisted living community;~~

~~3. A copy of a blank lease agreement and any documents which are incorporated by reference into the lease agreement if filing an initial application or if there has been a significant change in the lease since it was last submitted;~~

~~4. A copy of written material used to market the assisted living community, including material that markets a special programming, staffing or training;~~

~~5. If an existing assisted living community is exempt under KRS 194A.721:~~

~~a. A copy of the current building permit;~~

~~b. Evidence of the date when construction was begun; and~~

~~c. The expected date of completion;~~

~~6. The floor plan of the assisted living community identifying the:~~

~~a. The living units;~~

~~b. Central dining;~~

~~c. Laundry facility; and~~

~~d. Central living room; and~~

~~7. A nonrefundable certification fee as established in KRS 194A.707(6).~~

~~(3) Within ten (10) days of receipt by the office of a completed application and the appropriate fee, payable by check made out to the Kentucky State Treasurer, the office shall:~~

~~(a) Notify the applicant that the assisted living community is certified to operate pursuant to KRS 194A.707(2) or (3);~~

~~(b) Begin the certification review process; and~~

~~(c) Schedule an on-site visit.~~

~~(4) Current copies of required building and life safety code certificates or permits shall be reviewed during the certification review process.~~

~~(5) Prior to completing an on-site visit at an assisted living community, an office representative shall schedule and hold a meeting between the assisted living community manager or designee and a representative from the office to discuss the preliminary results of the on-site visit.~~

~~(6) The employee orientation and in-service training required by KRS 194A.719 shall be completed within six (6) months of the date of employment.~~

~~(7) Compliance and noncompliance with KRS 194A.707 and this administrative regulation shall be documented by the office on the OAS-ALC-2 Assisted Living Communities Certification Check List.~~

~~(8) Areas of noncompliance shall be submitted in writing by the office to the assisted living community within ten (10) business days upon completion of the on-site visit. The assisted living community shall submit in writing a plan to the office within ten (10) business days of receipt of notice of noncompliance.~~

~~(a) The office shall notify the applicant in writing within ten (10) business days whether the plan is approved or not approved together with the reasons for the actions taken.~~

~~(b) If the plan is not approved, the applicant shall amend the plan and submit in writing to the office within ten (10) business days of receipt.~~

~~(9) If the office determines after reviewing the amended plan that certification shall not be approved, the applicant shall be notified, by certified mail, within ten (10) days of receipt of the amended plan, of the right to appeal the determination. A request for an administrative hearing shall be made in writing to the office within thirty (30) days of receipt of a written notice of nonapproval of an application for certification.~~

~~(10) Upon receipt of the request for a hearing, the cabinet shall conduct a hearing pursuant to KRS Chapter 13B.~~

~~(11) The date of revocation, suspension, or denial of an application is effective upon final decision of the cabinet secretary pursuant to KRS Chapter 13B.~~

~~Section 3. Posting Requirement. The office shall provide an assisted living community approved for certification with a certificate verifying its status, and the assisted living community shall post it in a public area.~~

~~Section 4. Change of Information. (1) An assisted living community shall notify the office in writing within sixty (60) days of an increase or decrease in the number of living units.~~

~~(2) An assisted living community shall notify the office in writing within thirty (30) days of a name or mailing address change for the assisted living community or the applicant.~~

~~(3) An assisted living community shall notify the office in writing at least thirty (30) days prior to termination of operation.~~

~~Section 5. Change of Status. If there is a change of more than fifty (50) percent interest in ownership of an assisted living community, the new owner shall apply for certification within thirty (30) days after the effective date of the change of ownership.~~

~~Section 6. Collection of Fees and Fines. (1) An entity in violation of KRS 194A.723 shall make a check payable to the Kentucky~~

~~State Treasurer and shall mail it to the Office of Aging Services, 275 East Main Street, Frankfort, Kentucky 40621.~~

~~(2) A party aggrieved by a determination of the office shall appeal the determination or the fine in accordance with KRS Chapter 13B.~~

~~(3) The fee established for the review of the architectural drawings, lease agreement, and notification of conditional compliance to a lender pursuant to KRS 194A.720 shall be $250.~~

~~Section 7. Materials Incorporated by Reference. (1) The following material is incorporated by reference:~~

~~(a) "Assisted Living Community Certification Application", Office of Aging Services, 08/2000, OAS-ALC-1; and~~

~~(b) "Assisted Living Communities Check List", Office of Aging Services, 08/2000, OAS-ALC-2.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Office of Aging Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

DEBORAH S. ANDERSON, Commissioner
MARK A. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 9 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2007, at 9 a.m. in the Cabinet for Health and Family Services Auditorium, Health Services Building, 275 East Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5W-B, Frankfort, Kentucky 40621, Phone: 502-564-7905, Fax: 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Shirley Eldridge

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes criteria for certification of assisted-living communities.

(b) The necessity of this administrative regulation: KRS 194A.707(1) requires the cabinet to promulgate an administrative regulation establishing an initial and annual certification review process for assisted-living communities.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with KRS 194A.050(1) which states the secretary shall promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. This administrative regulation provides an initial and annual certification review process for assisted-living communities pursuant to KRS 194.707(1).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes a process related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment requires renewal of certification by July 1 annually; includes prorated fees for increased units of living and filings that occur after adoption of this administrative regulation; increases the time frame for notification of termination of operation; clarifies that on-site reviews are unscheduled; enumerates the process for an on-site review, the documentation required and procedures used as well as time frames to obtain specific documents; lists mandatory actions by the department, procedures, and time frames used to deal with correction of non-compliance by assisted-living communities; enumerates the reasons for denying certification; includes an informal dispute resolution and clarifies administrative hearing procedures.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish a process for initial and annual certifications for assisted-living communities.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 194A.707(1) and 194A.050(1) by establishing through administrative regulation the initial and annual certification process for assisted-living communities.

(d) How the amendment will assist in the effective administration of the statutes: The amendment clarifies the requirements for applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 94 assisted-living communities throughout the state.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: An assisted-living community will renew certification on July 1 annually; apply for certification and pay a prorated certification fee of the required twenty (20) dollars per living unit or $300 minimum set forth in KRS 194A.707(6) up to July 1 for the first year if an initial certification, annual certification, or increase in living units occur after the effective date of this administrative regulation and before or after July 1; notify the department and client sixty (60) day prior to termination of operation; apply for a criminal records check within seven (7) days from date of an employee's hire; complete employee orientation within ninety (90) days of the date of hire; provide in-service education on an annual basis; complete a client functional needs assessment prior to finalizing a lease agreement and update annually; ensure a client is not a danger; submit a plan of correction within fifteen (15) business days of receipt of notice of non-compliance; submit an amended plan of correction within fifteen (15) business days of receipt of the non-approved plan of correction; respond to the department's offer of an informal dispute resolution upon notification of certification being denied or revoked if desired, or request a hearing in accordance with KRS Chapter 13B if desired.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The assisted-living communities will have better guidelines for certification, denial and revocation of certification.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs

(b) On a continuing basis: No additional costs

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General funds and certification fees.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary to implement this administrative regulation. The fees in this administrative regulation are governed by KRS 194A.707(6).

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The

fees in this administrative regulation are governed by KRS 194.707(6).

(9) TIERING: Is tiering applied? Tiering is not applied since policy is administered the same statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Department for Aging and Independent Living

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 194A.050(1), 194A.707(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This amendment will generate no revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This amendment will generate no revenue for state or local government.

(c) How much will it cost to administer this program for the first year? No additional cost to administer first year.

(d) How much will it cost to administer this program for subsequent years? No additional cost to administer subsequent years..

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:050. Approval of adoption assistance.

RELATES TO: KRS 199.462, 199.555, 199.557, 205.639(2), (3), 216B.450(5)[(4)], 600.020(20)[(2)], (48), 620.020(5), Chapter 625, 45 C.F.R. 1356.40(b), 1356.41, 42 U.S.C. 416, 673, 12102, 1382(a)[, EO 2004-726]

STATUTORY AUTHORITY: KRS 194A.050(1), 199.555(6), (10), 199.557(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate, administer, and enforce those administrative regulations necessary to implement programs mandated by federal law or to qualify for the receipt of federal funds and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. [agencies for the proper administration of the cabinet and its programs. EO 2004-726 reorganizes the executive branch of government and establishes the Cabinet for Health and Family Services.] KRS 199.555(10) requires the cabinet to establish and promulgate by administrative regulation criteria to be followed for the adoption of special needs children. KRS 199.557(4) requires the cabinet to implement federal Title IV-E adoption assistance payments in accordance with the administrative regulations promulgated by the cabinet. This administrative regulation establishes guidelines for the implementation of [the law on] state-funded adoption assistance and federal Title IV-E adoption assistance.

Section 1. Definitions. (1) ["Entitlement" means a benefit received by a child from a biological parent which includes:

(a) Social Security;
(b) Black Lung;
(c) Veterans Administration; or
(d) Railroad Retirement.

(2)] "Extraordinary medical expenses" is defined by KRS 199.555(4).

(2) [(3)] "Federal Title IV-E adoption assistance" is defined by KRS 199.557(1).

(3) [(4)] "Nonrecurring adoption expenses" is defined by KRS 199.555(3) or means expenses described in 42 U.S.C. 673(a)(1)(B)(i).

(4) [(5)] "Postadoptive subsidy" means a payment for a special needs child that begins at the finalization of a special needs adoption.

(5) [(6)] "Preadoptive subsidy" means a payment for a special needs child that begins with a preadoptive placement agreement and if foster care per diem ceases.

(6) [(7)] "Secretary" means the Secretary of the Cabinet for Health and Family Services or designee.

(7) [(8) "State or federal education program" means a primary, secondary, or postsecondary educational program accredited by the:

(a) Kentucky Department of Adult Education and Literacy;
(b) Kentucky Department of Education; or
(c) U.S. Department of Education.

(9)] "State-funded adoption assistance" is defined by KRS 199.555(2).

[(10) "Supplemental Security Income" or "SSI" means a program established in 42 U.S.C. 1382.]

Section 2. Adoption Assistance Criteria. (1) The Secretary shall make the decision to pay and provide adoption assistance in the best interest of a child.

(2) [Adoption assistance shall be:

(a) Primarily for the benefit of the child and not the adoptive parents; and

(b) Limited to a special needs child.

(3)] A special needs child shall include a child for whom adoptive placement without financial assistance is unlikely in accordance with KRS 199.555(1) or 42 U.S.C. 673(c), and because the child:

(a) Has a physical or mental disability;

(b) Has an emotional or behavioral disorder;

(c) Has a recognized risk of physical, mental or emotional disorder;

(d) Is a member of a sibling group in which the siblings are placed together;

(e) Has had previous adoption disruption or multiple placements;

(f) Is a member of a racial or ethnic minority and [an African American child] two (2) years old or older; or

(g)1. Is age seven (7) or older and has a significant emotional attachment or psychological tie to his foster family; and

2. The cabinet has determined that it would be in the child's best interest to remain with the family.

Section 3. Eligibility. (1) A special needs child considered for state-funded adoption assistance shall:

(a) Be committed to the Cabinet for Health and Family Services; and

(b) Not have a parent with a legal claim to his custody.

(2) A special needs child considered for federal title IV-E adoption assistance shall:

(a) Meet the eligibility criteria established in 42 U.S.C. 673 at the time the adoption proceedings are initiated; and

(b) Not have a parent with a legal claim to his custody.

Section 4. Parental Standards. Parents receiving a child eligible for adoption assistance shall meet the same standards as those applied to other adoptive applicants in accordance with:

(1) 922 KAR 1:350; or

(2) 922 KAR 1:310.

Section 5. Adoption Agreement. (1) An adoptive parent and the

secretary shall sign an [a]:

(a) [~~DPP-195,~~] Adoptive placement agreement[,] to set forth the terms of a child's placement with the adoptive parent, if the child's adoption has not been finalized; and

(b) [~~DPP-1258A,~~] Adoption assistance agreement [~~Nonrecurring Adoption Expenses,~~] to set forth:

1. Nonrecurring adoption expenses, prior to finalization of the adoption, if such expenses will be incurred by the adoptive parent during the adoption of a special needs child, in accordance with KRS 199.555(6) or 45 C.F.R. 1356.41; and

2. [~~(c) DPP-1258, Adoption Assistance Agreement, to set forth~~] The scope and limits of the adoption assistance, prior to finalization of the adoption, in accordance with KRS 199.555(6) or 45 C.F.R. 1356.40(b).

(2)[~~(a)~~] The adoption assistance shall begin on the date that the:

1. Adoptive placement agreement [~~DPP-195~~] indicates the child's date of placement; or

2. Order of adoption is entered[.]

(3) The amount of state-funded adoption assistance or federal Title IV-E adoption assistance shall not exceed the amount which would be paid for foster care maintenance for the same child, in accordance with KRS 199.557(4) or 42 U.S.C. 673(a)(3), including medically-fragile, specialized medically fragile, and care plus resource home per diem reimbursements established by the Department for Community Based Services. A child placed in therapeutic foster care, as described in 922 KAR 1:310, shall not be eligible to receive adoption assistance to exceed a care plus resource home per diem reimbursement established by the Department for Community Based Services.

Section 6. Federal Title IV-E Adoption Assistance. (1) Unless a circumstance in accordance with subsection (2) of this section is met, federal title IV-E adoption assistance shall continue in accordance with KRS 199.557 and 42 U.S.C. 673(a)(4) until the child reaches age:

1. Eighteen (18); or

2. Twenty-one (21), if the child is determined to have a disability in accordance with subsection (3) of this section.

(2) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), federal Title IV-E adoption assistance shall be terminated if the:

(a) Adoptive parent:

1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;

2. Becomes deceased; or

3. Requests discontinuation of the adoption assistance; or

(b) Special needs child:

1. Becomes deceased;

2. Marries;

3. Gains full-time employment;

4. Is considered an emancipated minor; or

5. Is inducted into military service.

(3) Disability determination.

(a) In accordance with KRS 199.557 and 42 U.S.C. 673(a)(4), an adopted special needs child shall have a disability that warrants continuation of the child's federal Title IV-E adoption assistance if the child has been determined to meet the definition of permanent or total disability pursuant to 42 U.S.C. 1382(a) or 42 U.S.C. 416 by either the:

1. Social Security Administration; or

2. Medical review team of the cabinet.

(b) The factors to be considered by the medical review team in making a child's disability determination shall include:

1. The child's medical history and subjective complaint regarding an alleged physical or mental disability, illness or impairment; and

2. Competent medical testimony relevant to whether:

a. A physical or mental disability, illness, or impairment exists; and

b. The disability, illness, or impairment is sufficient to reduce the child's ability to gain full-time employment or pursue opportunities in a state or federal education program.

(c) Other factors to be considered in making a determination shall include the child's:

1. Age;

2. Employment history;

3. Educational background; and

4. Subjective complaint regarding the alleged effect of the physical or mental condition on the child's ability to support and care for self.

(d) The child shall be referred, if necessary, for further appraisal of his or her abilities.

(e) If the medical review team makes the disability determination, the medical review team shall provide a written report of the determination under this subsection to the Secretary and the:

1. Child, if the child is age eighteen (18) or older; or

2. Adoptive parent, if the child is under age eighteen (18).

(4) In accordance with 42 U.S.C. 673, an adoptive parent shall be responsible for notifying the cabinet of any change in circumstance to avoid overpayment in accordance with subsection (2) of this section.

(5) Federal Title IV-E adoption assistance may include:

(a) Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child.

(b) Preadoptive subsidy; or

(c) Postadoptive subsidy.

Section 7. State-funded Adoption Assistance. (1) Unless a circumstance in subsection (2) or (3) of this section is met, state-funded adoption assistance shall continue in accordance with KRS 199.555(8) until the child reaches:

(a) Age eighteen (18); or

(b) If the child is enrolled in high school or equivalent:

1. Age nineteen (19); or

2. The month of high school graduation or equivalency receipt, if the child's graduation or receipt of equivalency precedes the child's 19th birthday.

(2) The cabinet shall temporarily suspend state-funded adoption assistance during the period of time the adopted child:

(a)1. Resides in:

a. Foster care as defined in KRS 620.020(5);

b. A residential treatment facility as defined in KRS 600.020(48);

c. A psychiatric residential treatment facility as defined by KRS 216B.450(5);

d. A psychiatric hospital as defined by KRS 205.639(2) or (3) beyond thirty (30) consecutive calendar days; or

e. Detention:

(i) As defined in KRS 600.020(20);

(ii) Outside the adoptive home; and

(iii) For a period of thirty (30) calendar days or more; or

2. Is absent from the home of the adoptive parents for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and

(b) Receives care and support for the child's special needs from a local, state, or federal public agency.

(3) State-funded adoption assistance shall be terminated if the:

(a) Adoptive parent:

1. Is no longer legally responsible for the special needs child in accordance with KRS Chapter 625;

2. Becomes deceased; or

3. Requests discontinuation of the adoption assistance; or

(b) Special needs child:

1. Becomes deceased;

2. Marries;

3. Gains full-time employment;

4. Is considered an emancipated minor; or

5. Is inducted into military service.

(4) In accordance with KRS 199.555(9), an adoptive parent shall be responsible for notifying the cabinet of any circumstance to avoid overpayment in accordance with subsection (2) or (3) of this section.

(5) State-funded adoption assistance may include:

(a) Payment for extraordinary medical expenses related to the child's special needs that:

1. Existed prior to the adoption; and

2. Are not reimbursable by another source;

(b) Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child;

(c) Preadoptive subsidy; or

(d) Postadoptive subsidy.

[~~(b) Be adjusted:~~

~~1. During the course of adoption assistance negotiation, if a child receives:~~

~~a. Adoption assistance and an entitlement from a biological parent; or~~

~~b. Adoption assistance and SSI; and~~

~~2. By subtracting the amount of the entitlement or SSI dollar for dollar from the negotiated adoption assistance; and~~

~~(c) Not be adjusted if a child receives an:~~

~~1. Insurance settlement from a biological parent, or~~

~~2. Entitlement from an adoptive parent.~~

~~(3) State-funded or federal title IV-E adoption assistance, in accordance with KRS 199.555(8) or 42 U.S.C. 673(a)(4), shall:~~

~~(a) Discontinue upon notice of a change in circumstance as specified in subsection (5)(b)(3) of this section; or~~

~~(b) Continue until the child reaches:~~

~~1. Age eighteen (18),~~

~~2. The month of graduation from high school, if the child:~~

~~a. Graduates from high school by age nineteen (19); and~~

~~b. Receives state-funded adoption assistance; or~~

~~3. Age twenty-one (21), if the child is:~~

~~a. Disabled,~~

~~b. Receiving SSI; and~~

~~c. Enrolled in a state or federal education program.~~

~~(4) The cabinet shall temporarily discontinue state-funded adoption assistance or federal title IV-E adoption assistance during the period of time the adopted child:~~

~~(a)1. Resides in:~~

~~a. Foster care as defined in KRS 620.020(5);~~

~~b. A residential treatment facility as defined in KRS 600.020(48);~~

~~c. A psychiatric residential treatment facility as defined by KRS 216B.450(4); or~~

~~d. Detention:~~

~~(i) As defined in KRS 600.020(2);~~

~~(ii) Outside the adoptive home; and~~

~~(iii) For a period of thirty (30) consecutive calendar days or more; or~~

~~2. Is absent from the home of the adoptive parent for a period of thirty (30) consecutive calendar days or more, unless the child is absent due to medical care or school attendance; and~~

~~(b) Receives care for the child's special needs from a local, state or federal entity.~~

~~(5) (a) If there is a change in the family situation or the special needs of the child, the adoption assistance may be changed accordingly.~~

~~(b) In accordance with KRS 199.555(9), an adoptive parent shall be responsible for notifying the cabinet of any circumstances which cause a change or discontinuance:~~

~~1. Pursuant to 42 U.S.C. 673,~~

~~2. To avoid overpayment in accordance with subsection (4) of this section, or~~

~~3. Due to:~~

~~a. An adoptive parent's request for discontinuance of adoption assistance, in accordance with KRS 199.555(9),~~

~~b. A child's death, marriage, full-time employment or induction into military service;~~

~~c. An adoptive parent's death;~~

~~d. The adoptive parent's failure to sign and return the DPP-1258, Adoption Assistance Agreement;~~

~~e. The adoptive parent's failure to sign and return the DPP-1258B, Adoption Assistance Annual Contact Form; or~~

~~f. The adoptive parent's voluntary or involuntary release from legal or financial responsibility for the support of the adopted child.~~

~~(6) (a) The amount of adoption assistance shall not exceed the amount which would be paid for foster care for the same child, in accordance with KRS 199.557(4), including the medically fragile, specialized medically fragile, and care plus resource home per diem reimbursements established by the Department for Community Based Services.~~

~~(b) Federal Title IV-E and state-funded adoption assistance may also include:~~

~~1. Payment for extraordinary medical expenses related to the child's special needs that:~~

~~a. Existed prior to the adoption; and~~

~~b. Are not reimbursable by another source;~~

~~2. Nonrecurring adoption expenses not to exceed $1,000 incurred in the adoption of a child who is considered a special needs child;~~

~~3. Preadoptive subsidy; or~~

~~4. Postadoptive subsidy.~~

~~(7)(a) An adoptive parent receiving the basic adoption assistance rate shall not be required to attend annual training.~~

~~(b) Except for the basic adoption assistance rate, as specified in paragraph (a) of this subsection, an adoptive parent shall meet annual training requirements for:~~

~~1. An advanced resource home as established in 922 KAR 1:350;~~

~~2. A medically fragile resource home as established in 922 KAR 1:350;~~

~~3. A specialized medically fragile resource home as established in 922 KAR 1:350; or~~

~~4. A care plus resource home as established in 922 KAR 1:350.~~

~~(8) If the adoptive parent fails to meet the annual training requirement specified in subsection (7)(b) of this section, the cabinet may reduce the amount of adoption assistance paid to an adoptive home to the basic adoption assistance rate.~~

~~(9) Cabinet staff shall provide notice of a reduction or discontinuance of adoption assistance:~~

~~(a) Ten (10) calendar days in advance, and~~

~~(b) In accordance with 922 KAR 1:320, Section 6.~~

~~(10) A child committed to the cabinet and placed in therapeutic foster care, as described in 922 KAR 1:310:~~

~~(a) May be considered for adoption assistance, if the child meets criteria established in 922 KAR 1:350, Section 7(1)(b); and~~

~~(b) Shall not be eligible to receive adoption assistance to exceed the care plus resource home per diem reimbursement, established by the Department for Community Based Services.~~

~~(11) The adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.~~]

Section 8. [~~6.~~] Annual Family Contact. (1) Annual contact with the adoptive family shall be made by mail or home visit to determine that the:

(a) [~~The~~] Child remains in the adoptive home;

(b) Parent continues to provide care and support for the child, and

(c) [~~The~~] Adoption assistance continues to meet the special needs of the child.

[~~(2)~~]:

~~(c) The adoptive family meets the annual training requirements as specified in Section 5(7) of this administrative regulation; and~~

~~(d) A plan is developed with the adoptive family for meeting the annual training requirements as specified in Section 5(7)(b) of this administrative regulation.~~

~~(2) The DPP-1258B, Adoption Assistance Annual Contact Form, shall be used in the effective administration of subsection (1) of this section.~~

~~(3)~~] The cabinet may conduct a home visit after an adoption assistance annual contact is made [~~completed~~] by mail:

(a) If:

1. The adoptive parent requests a home visit;

2. The special needs of the child change, as indicated by the adoptive parent;

3.[~~a. The DPP-1258B is not completed by the adoptive parent; and~~

~~b.~~] Attempts to update information [~~complete the form~~] by additional mail or phone contact have failed; or

4. The cabinet receives information that is contrary to the information verified by the adoptive parent during the annual contact [~~on the DPP-1258B~~]; or

(b) In accordance with 922 KAR 1:330.

Section 9. [7.] Adoption Assistance Renegotiation. (1) The cabinet may renegotiate adoption assistance before or after the adoption is finalized in accordance with KRS 199 555(6), (9), and 42 U.S.C. 673, and if there is a change in the:

(a) Child's special needs; or

(b) Circumstances of the adoptive parent, including a [Family's] situation that negatively affects the stability of the placement.

(2) Extraordinary medical expenses may be reimbursed through state-funded adoption assistance if conditions in KRS 199 555(6) are met.

(3) In accordance with 42 U.S.C. 673(a)(3), an adoptive parent shall be in concurrence with the renegotiated amount of federal Title IV-E adoption assistance.

(4) State-funded adoption assistance and federal Title IV-E adoption assistance shall not be changed by a move by the adoptive parents out of the state or country.

Section 10. [8.] Service Appeal. An applicant for adoption assistance or an adoptive family shall be granted an administrative hearing in accordance with 922 KAR 1:320.

Section 11. Notice of Change. Cabinet staff shall provide notice of a reduction, discontinuance, or termination of adoption assistance:

(a) Ten (10) calendar days in advance; and

(b) In accordance with 922 KAR 1:320, Section 6.

Section 12. State-funded Adoption [9.] Assistance Limitation. The number of state-funded adoption assistance cases and the amount of state-funded adoption assistance paid per case shall be limited by available funds for the state-funded adoption assistance program.

Section 13. Training. Contingent upon the availability of funding, the Department for Community Based Services shall offer training to adoptive parents receiving state-funded adoption assistance or federal Title IV-E adoption assistance consistent with training offered to resource home parents as specified in 922 KAR 1:350.

~~[Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) "DPP-195, Adoptive Placement Agreement, edition 06/04";~~

~~(b) "DPP-1268, Adoption Assistance Agreement, edition 06/04",~~

~~(c) "DPP-1258A, Adoption Assistance Agreement Nonrecurring Adoption Expenses, edition 06/04"; and~~

~~(d) "DPP-1258B, Adoption Assistance Annual Contact Form, edition 06/04".~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

MARK A. WASHINGTON, Commissioner
TOM EMBERTON, JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 2, 2007

FILED WITH LRC: July 12, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes federal Title IV-E and state-funded adoption assistance to support the adoption of special needs children.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish federal Title IV-E adoption assistance and state-funded adoption assistance to support the adoption of special needs children in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the adoption assistance program and, thereby, conforms to the content of the authorizing statutes KRS 194A.050(1), which allows for the promulgation of administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet; KRS 199.555(10), which authorizes the cabinet to promulgate administrative regulations necessary to set criteria for the adoption of special needs children; and KRS 199.557(4), which permits the cabinet to promulgate administrative regulations necessary to implement federal Title IV-E adoption assistance payments.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing adoption assistance to support the adoption of special needs children in Kentucky and adhering to federal and state funding requirements regarding adoption assistance.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation distinguishes federal Title IV-E adoption assistance from state-funded adoption assistance and makes technical corrections to comply with KRS Chapter 13A..

(b) The necessity of the amendment to this administrative regulation: This amendment promotes and ensures immediate conformity of departmental Title IV-E adoption assistance policy and practice with 42 U.S.C. 673 and related federal interpretation, as mandated in an April 12, 2007, letter from the U.S. Department of Health and Human Services (HHS) to the cabinet. In addition, this amendment adheres to actions steps incorporated in a program improvement plan (PIP) concerning the same, also required by HHS to suspend (and ultimately avoid) federal financial penalty of Kentucky's Title IV-E funding.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes KRS 194A.050(1), 199.555(6) and (10), and 199.557(4) by ensuring compliance with state and federal funding requirements regarding adoption assistance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of KRS 199.555(10) and KRS 199.557(4) by ensuring immediate conformity of DCBS Title IV-E adoption assistance policy and practice with 42 U.S.C. 673 and related federal interpretation, thereby avoiding the financial penalty of reduced Title IV-E funding for Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: There are approximately 5,000 active adoption assistance cases in Kentucky. 86% of these cases are eligible for Title IV-E assistance.

(4) Provide an analysis of how the entities identified in question

(3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Adoptive families receiving adoption assistance for a special needs child will have no new requirements imposed upon them by this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No cost to the regulated entities is associated with the enactment of new adoption assistance agreements.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3) As a result of compliance, the benefit of an unreduced level of federal Title IV-E funding to Kentucky will accrue to adoption assistance payment recipients. 86% of the state's active adoption assistance cases are eligible for Title IV-E assistance.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Any initial costs will be offset by the State's avoidance of a federal financial penalty to its Title IV-E funding.

(b) On a continuing basis: No cost to the administrative body is associated with the implementation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Title IV-E and State funds are used to support adoption assistance as governed by this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding will be necessary to implement the change to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? There is no tiering, as this administrative regulation will be implemented statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 673, 45 C.F.R. 1356 40(b), 1356.41

2. State compliance standards. KRS 194A.050, 199.555(6), (10), and 199.557(4)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 673, 45 C.F.R. 1356.40(b), 1356.41

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements, than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no stricter standards, or additional or different responsibilities or requirements imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050(1), 199.555(10), 199.557(4), and 42 U.S.C. 673

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? Any initial costs incurred as a result of this regulatory amendment will be offset by Kentucky's avoiding federal financial penalty of its Title IV-E funding.

(d) How much will it cost to administer this program for subsequent years? The amendment to this administrative regulation will require no additional costs for ongoing administration.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Protection and Permanency
(Amendment)

922 KAR 1:360. Private child care placement, levels of care, and payment.

RELATES TO: KRS Chapter 13B, 199.011, 199.640-199.680, 199.801, 600.020(23), 605.090(1)(b), (d), 610.110, Ky. Acts ch 252 Part 1, H.10(7), 42 U.S.C. 672, OMB Circular A-122

STATUTORY AUTHORITY: KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)[, ~~EO 2004-726~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) authorizes the secretary of the Cabinet for Health and Family Services to establish administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. [~~EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health and Family Services and placed the Department for Community Based Services under the Cabinet for Health and Family Services.~~] KRS 199.641(4) requires the cabinet to establish the rate setting methodology and the rate of payment for nonprofit child-caring facilities, consistent with the level and quality of service provided. KRS 605.090(1)(d) authorizes the cabinet to place a child committed to the Department of Juvenile Justice, or the cabinet, in a child-caring facility operated by a local governmental unit or private organization willing to receive the child, upon such conditions as the cabinet may prescribe. KRS 605.150(1) authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS Chapter 605. This administrative regulation establishes: (a) five (5) levels of care based upon the needs of a child for whom the cabinet has legal responsibility; (b) a payment rate for each level; (c) gatekeeper responsibilities; (d) provider requirements; (e) procedures for classification at the appropriate level of care; and (f) procedures for determination of components of the model program cost analysis.

Section 1. Definitions. (1) "Cabinet" is defined by [at] KRS 199.011.

(2) "Child-caring facility" or "facility" is defined by [at] KRS 199.641(1)(b).

(3) "Department" means the Department for Community Based Services or the department's agent.

(4) "District placement coordinator" means an individual whose responsibilities are described in KRS 199.801.

(5) "Emergency shelter" is defined by [at] KRS 600.020(23).

(6) "Gatekeeper" means the department or agent responsible

for:

(a) Making a clinical determination of the level of care necessary to meet a child's treatment and service needs; and

(b) Other administrative duties in the areas of:

1. Assessment;

2. Placement;

3. Performance measurement; and

4. Consultation regarding children and their needs.

(7) "Index factor" means a specific number derived from time-study data, used to determine payment for each level of care.

(8) "Initial level of care" means a level of care:

(a) Assigned by the gatekeeper to a child at the point of entry into the level of care system; and

(b) That is time-limited and effective for the first six (6) months of a child's placement.

(9) "Level of care" means one (1) of five (5) standards representing the treatment and service needs of a child placed by the cabinet in out-of-home care.

(10) "Level of care packet" means an assessment conducted by designated cabinet staff, and a collection of forms required for submission to the gatekeeper for the purpose of determining the appropriate level of care, which includes the following:

(a) DPP-886, Private Child Care Client Interagency [~~Inter-agency~~] Referral Form; [~~and~~]

(b) DPP-886A, Application for Referral and Needs Assessment; and

(c) If a child has an IQ of seventy (70) or above:

1. Child Behavior Checklist For Ages 1 1/2-5 (Achenbach); or

2. Child Behavior Checklist For Ages 6-18;

(11) "Model program cost analysis" is defined by [at] KRS 199.641(1)(d).

(12) "Reassigned level of care" means a level of care that is:

(a) Determined by the gatekeeper after a child's level of care expires; and

(b) Authorized for a specific period of time.

(13) "Time study" is defined by [at] KRS 199.641(1)(e).

(14) "Utilization review" means a gatekeeper's examination, during a child's placement in a child-caring facility or child-placing agency, of the child's case record and existing documentation for the purpose of:

(a) Identifying the child's current level of functioning; and

(b) Assigning the appropriate level of care.

Section 2. Referral Process for Level of Care System Placement. (1) A level of care packet shall be completed by a cabinet staff person and submitted to the gatekeeper for a child at least forty-eight (48) months of age at the time that:

(a) The child enters the level of care system;

(b) A child currently placed in a child-caring facility or a child-placing agency reaches forty-eight (48) months of age; or

(c) A child's level of care expires and assignment of a new level is necessary.

(2) Upon assignment of an initial level of care by the gatekeeper, a cabinet staff person shall submit a copy of the completed level of care packet, including level assignment, to the district placement coordinator who shall forward the level of care packet to potential child-caring facilities or child-placing agencies.

(3) If a child-caring facility or child-placing agency accepts a child for out-of-home placement and the cabinet approves the placement, a cabinet staff person shall:

(a) Complete the DPP-114, Level of Care Schedule, with the level of care payment rate:

1. As assigned by the gatekeeper within the previous six (6) months; or

2. In the event of an emergency placement, within two (2) business days of the placement; and

(b) Arrange transportation for the child to the placement.

Section 3. Gatekeeper Responsibilities. The gatekeeper shall.

(1) Evaluate a child forty-eight (48) months of age or older:

(a) Who is referred by the department or currently placed in a child-caring facility or child-placing agency;

(b) For an initial or reassigned level of care; and

(2) Within three (3) working days of receipt of the level of care packet:

(a) Determine the appropriate level of care according to a needs assessment consistent with one (1) of the five (5) levels of care; and

(b) Return the completed DPP-886, Private Child Care Client Inter-agency [~~Interagency~~] Referral Form, to the department;

(3) Reassess a child through a utilization review:

(a) Six (6) months from the initial placement or reassignment and placement in a child-caring facility and child-placing agency; and

(b)1. Every three (3) months thereafter if the child is in a private child care residential placement; or

2. [~~(c)~~] Every six (6) months thereafter if the child is in a foster care placement or therapeutic foster care;

(4) Reassign a child's level of care after the level has expired;

(5) Monitor each child-caring facility and child-placing agency; and [~~, at the request of the cabinet, through a program review that includes:~~

~~(a) Reviewing the extent to which services provided are in compliance with the child's individual treatment plan;~~

~~(b) Determining if a change in the child's needs are reflected in the child's individual treatment plan;~~

~~(c) Reviewing records on site;~~

~~(d) Interviewing residents and staff;~~

~~(e) Conducting satisfaction surveys of each:~~

~~1. Cabinet staff person making a referral for out-of-home care;~~

~~2. Child placed by the cabinet in a child-caring facility or child-placing agency; and~~

~~3. Child's parent or custodian;~~

~~(f) Submitting written reports to the:~~

~~1. Child-caring facility or child-placing agency; and~~

~~2. Cabinet;~~]

(6) Maintain [~~Maintaining~~] a confidential information system for each child served that shall include:

(a) Placement history;

(b) Level of care assignments;

(c) Length of treatment; and

(d) Discharge outcomes.

Section 4. Levels of Care. (1) A Level I child requires a routine home environment that:

(a) Provides maintenance;

(b) Provides guidance;

(c) Provides supervision to meet the needs of the child; and

(d) Ensures the emotional and physical well-being of the child.

(2) A Level II child:

(a) May engage in nonviolent antisocial acts, but be capable of meaningful interpersonal relationships; and

(b) Requires supervision in a structured supportive setting with:

1. Counseling available from professional or paraprofessional staff,

2. Educational support; and

3. Services designed to improve development of normalized social skills.

(3) A Level III child:

(a) May engage in an occasional violent act;

(b) May have superficial or fragile interpersonal relationships;

(c) Requires supervision in a structured, supportive environment where the level of supervision and support may vary from low to moderate, proportional to the child's ability to handle reduced structure,

(d) May occasionally require intense levels of intervention to maintain the least restrictive environment; and

(e) Requires a program flexible enough to allow:

1. Extended trials of independence when the child is capable;

2. A period of corrective and protective structure during relapse; and

3. Counseling available from professional or paraprofessional staff.

(4) A Level IV child:

(a) Has behavioral and physical, mental or social needs that may present a moderate risk of causing harm to himself or others;

(b) Requires a structured supportive setting with:

1. Therapeutic counseling available by professional staff; and

2. A physical, environmental, and treatment program designed to improve social, emotional, and educational adaptive behavior.

(5) A Level V child

(a) Has a severe impairment, disability, or need;

(b) Is consistently unable or unwilling to cooperate in his own care;

(c) Presents a severe risk of causing harm to himself or others; and

(d) Requires Level IV services and a:

1. Highly structured program with twenty-four (24) hour supervision; or

2. Specialized setting that provides safe and effective care for a severe, chronic medical condition, behavioral disorder, or emotional disturbance.

Section 5. Payment Methodology and Rates. (1) Payment Methodology. The cabinet shall establish a per diem rate for the care of a child placed by the cabinet in a private child-caring facility, based upon the model program cost analysis defined at KRS 199.641(d). Each private, nonprofit child caring facility shall report to the cabinet annually, on Form DPP-888, cost report and time study data.

(2) The cabinet shall establish an index factor for payment on behalf of a child for whom a level of care has been determined. The factor shall be determined as follows:

(a) Based on the amount of treatment provided at each level of care; and

(b) By determining the median of:

1. Number of daily treatment hours, derived from time study data, provided to children served by private, nonprofit child-caring facilities; and

2. Level of care of children served by private, nonprofit child-caring facilities that contract with the cabinet;

(c) The median number of daily treatment hours for children whose level is:

1. Determined, the median level of care shall be represented by an index factor of one (1), or

2. Not determined, the median level of care shall be represented by an index factor that is proportionate to the amount of treatment provided to a child in the median level.

(3) A statewide median cost, including board, care, and treatment components, for each level of care shall be calculated by using a utilization factor of ninety (90) percent for residential treatment and seventy-five (75) percent for a group home.

(4) The payment rate for each level of care shall be calculated by multiplying the median cost by the index factor specific to that level of care. The rate for each level of care shall be adjusted by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(5) Median cost shall be calculated:

(a) Using a utilization factor of eighty (80) percent:

1. For an emergency shelter with a treatment license:

a. Board;

b. Care; and

c. Treatment components; or

2. For an emergency shelter without a treatment license:

a. Board; and

b. Care components; and

(b) Adjusting for each level of care by the Consumer Price Index during each intervening period between the fiscal year used for the cost analysis and calculation of the rate.

(6)(a) To the extent funds are available, an incentive payment for a private[~~, nonprofit~~] child-caring facility that participates in a per diem rate contract with the cabinet shall be determined by evaluating the performance of the child-caring facility, in accordance with KRS 199.641(2)(a). Measurable performance outcomes include:

1. Child safety while in the care of a private child-caring facility or child-placing agency;

2. Child safety after reunification with the child's family;

3. Adequate educational support;

4. Reduced time spent in out-of-home care without an increase in the rate of out-of-home care reentry;

5. Increased placement stability during the service period,

6. Increased achievement of permanency goals; and

7. Increased stability in permanency placement following planned discharge.

(b) The cabinet's contract with a private[~~, nonprofit~~] child-caring facility shall specify the:

1. Indicators used to measure the performance outcomes described in subsection (6)(a) of this section; and

2. Target percentages used as performance goals.

(c) Each child in the custody of the cabinet who is placed in a private[~~, nonprofit~~] child-caring facility during the contract period shall be included in the percentage of children for whom the cabinet expects achievement of an outcome.

(d) At the time the contract period expires, each private[~~, nonprofit~~] child-caring facility shall be ranked based on the percentage of children for whom the facility achieved an outcome. To the extent funds are available, a payment incentive shall be distributed to a private[~~, nonprofit~~] child-caring facility that performed in the top one-third (1/3) of the facilities.

(e) The amount of a payment incentive shall be determined according to the funding appropriated for this purpose in the biennial budget.

(7) In addition to services provided on a per diem rate, the cabinet shall solicit proposals from private[~~, nonprofit~~] child-caring facilities to provide alternative services to children and their families. To the extent funds are available, the alternative services:

(a) Shall be geared toward improved performance outcomes; and

(b) [~~Shall be tailored to fit the specific needs identified for the service region served by the child-caring facility;~~

~~(c) Shall be available within the geographic area encompassed by the service region; and~~

~~(d)~~] May include case management responsibilities shared between the cabinet and the child-caring facility.

(8) Payment to child-caring facilities that provide alternative services according to subsection (7) of this section shall be based upon:

(a) The model program cost analysis; and

(b) Expectations agreed upon between the cabinet and the child-caring facility, such as:

1. Reduced length of stay in out-of-home placement;

2. Increased safety from child abuse or neglect;

3. Increased number of children moving into and remaining in permanent placement;

4. Increased number of children and their families cared for in close proximity to their home communities;

5. Increased number of children reunified with their families;

6. Increased accountability for success in after care; and

7. Decreased reentry into state custody.

Section 6. Residential Care. (1) A child-caring facility in the levels of care reimbursement plan shall be licensed under 922 KAR 1.305 and shall meet the standards for child-caring facilities established in 922 KAR 1:300.

(2) The provider shall comply with 922 KAR 1:390, Section 4, Residential Treatment Program, if providing treatment oriented services.

(3) The daily rate for residential care to a child-caring facility shall be

(a) Level I - fifty-one (51) [~~forty-eight (48)~~] dollars and nineteen (19) cents, effective July 1, 2007;

(b) Level II - sixty-one (61) [~~fifty-eight (58)~~] dollars and fifty-two (52) cents, effective July 1, 2007;

(c) Level III -$109 71, effective July 1, 2007 [~~$106.71~~];

(d) Level IV;

1. $151 03, effective July 1, 2007 through June 30, 2008; or

2. $133 80, effective July 1, 2008[~~- $130.80~~]; and

(e) Level V:

1. $210 64, effective July 1, 2007, through June 30, 2008; or

2. $189.54, effective July 1, 2008 [~~- $186.54, effective October 1, 2004~~].

Section 7. Emergency Shelter Care. (1) An emergency shelter child-caring facility shall meet the requirements of 922 KAR 1:380. The rate for emergency shelter care shall be.

(a) Effective July 1, 2007, through June 30, 2008, the rate for

emergency shelter care shall be:

1. $115.31 per day for a child-caring facility with a treatment license; or

2. $101.41 per day for a child-caring facility without a treatment license

(b) Effective July 1, 2008, the rate for emergency shelter care shall be:

1. $102 87 [~~Ninety-nine (99) dollars and eighty-seven (87) cents~~] per day for a child-caring facility with a treatment license; or [~~and~~]

2. Ninety (90) [~~(b) Eighty-seven (87)~~] dollars and eighty-three (83) cents per day for a child-caring facility without a treatment license.

(2) If a child's treatment placement is disrupted and the child enters an emergency shelter child-caring facility with a treatment license, the emergency shelter child-caring facility shall:

(a) Receive a rate consistent with the child's assigned level of care for residential care during the previous placement, pending results of the next-scheduled utilization review; or

(b) If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section [~~ninety-nine (99) dollars and eighty-seven (87) cents~~] per day, effective July 1, 2007; and

(c) Adhere to the child's individual treatment plan.

(3)(a) If the department determines that a child without an assigned level of care shall remain in an emergency shelter child-caring facility longer than thirty (30) days, the department shall make a referral to the gatekeeper, by the 20th day of placement, for assignment to an appropriate level of care.

(b) If a child remains in an emergency shelter longer than thirty (30) days, the emergency shelter child-caring facility with a treatment license shall:

1. Receive the residential rate consistent with the assigned level of care for each day the child is in the facility beyond the 30th day,

2. If the child is Level II or lower, receive a rate not less than the rate for emergency shelter care in accordance with subsection (1) of this section [~~ninety-nine (99) dollars and eighty-seven (87) cents~~] per day, effective July 1, 2007; and

3. Adhere to the child's individual treatment plan.

Section 8. Foster Care and Therapeutic Foster Care for a Child-Placing Agency. (1) Effective July 1, 2007, basic daily rate for foster care shall be forty-three (43) [~~forty (40)~~] dollars.

(2) Effective July 1, 2007, daily rates for therapeutic foster care shall be as follows:

(a) Levels I and II, if the child is stepped down from Level III or higher - seventy-three (73) [~~seventy (70)~~] dollars.

(b) Level III - seventy nine (79) [~~seventy-six (76)~~] dollars and seventy-eight (78) cents.

(c) Level IV - ninety-seven (97) [~~ninety-four (94)~~] dollars and eleven (11) cents.

(d) Level V - $134.26 [~~$131.26~~].

Section 9. Pregnant and Parenting Teen Programs. A child-caring facility with a pregnant and parenting teen program shall receive:

(1) A rate consistent with the assigned level of care for the adolescent parent; and

(2) Inclusive of child care cost, forty-three (43) [~~forty (40)~~] dollars per day, effective July 1, 2007, for the committed child of an adolescent parent who is committed to the cabinet.

Section 10. Provider Requirements. A child-caring facility or child-placing agency shall:

(1) Inform the department of the levels of care the facility or agency has the ability to serve;

(2) Demonstrate its ability to provide services, either directly or by contract, appropriate to the assigned level for each child, including:

(a) Room, board, and other activity contributing to housing, food, clothing, school supplies, or personal incidentals;

(b) Clinical services including:

1. The evaluation and treatment of an emotional disorder, mental illness, or substance abuse problem; and

2. Identification and alleviation of related disability or distress, experienced by a child who follows a specific individual treatment plan targeted to identify a problem; and

(c) Support services that:

1. Identify necessary resources and coordinate services provided by a range of agencies or professionals;

2. Allow a child to cope with the disability or distress;

3. Provide access to improving the educational or vocational status of the child; and

4. Provide essential elements of daily living;

(3) Submit the following reports to the gatekeeper in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date:

(a) For a child who has an IQ above seventy (70), a behavior inventory appropriate to the child's developmental level consisting of completed forms:

1. Child Behavior Checklist for Ages one and one-half (1 1/2) - five (5) (Achenbach); or

2. Child Behavior Checklist for Ages six (6) - eighteen (18) (Achenbach), every six (6) months; and

(b) For a child who has an IQ below seventy (70), a behavioral inventory appropriate to the child's development level consisting of a completed Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology) and Scales of Independent Behavior-Revised (SIB-R), by the first utilization review due date and every twelve (12) months thereafter; and

(c) To the gatekeeper and designated cabinet staff, a copy of the following completed forms:

1. On a quarterly basis, for a private child care residential placement, [~~"~~]CRP-001, Children's Review Program Residential Application for Level of Care Payment[~~"~~]; or

2. On a semiannual basis for a foster care placement, [~~"~~]CRP-003, Children's Review Program Foster Care Application for Level of Care Payment[~~"~~];

(4) Provide outcomes data and information as requested by the gatekeeper; and

(5) Obtain accreditation within two (2) years of initial licensure or within two (2) years of acquiring an agreement with the cabinet, whichever is later, from a nationally-recognized accreditation organization, such as:

(a) The Council on Accreditation; or

(b) The Joint Commission on Accreditation for Healthcare Organizations.

(6) Emergency shelters without a treatment license shall be exempt from the accreditation requirements specified in subsection (5) of this section.

Section 11. Utilization Review and Authorization of Payment. (1) The child-caring facility or child-placing agency shall submit to the gatekeeper the reports specified in Section 10(3) of this administrative regulation for the utilization review in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date.

(2) If the child-caring facility or child-placing agency fails to submit the reports as specified in Section 10(3) of this administrative regulation in time for the reports to be received by the gatekeeper within thirty (30) days prior to the utilization review due date the cabinet shall:

(a) Suspend payments until the necessary information has been submitted to the gatekeeper; or

(b) If a child's level is reduced after untimely reports are received by the gatekeeper, make an adjustment for overpayment retroactive to the first utilization review due date that was missed; or

(c) If a child's level is increased as a result of delinquent reports, apply a higher rate beginning the day after the untimely reports are received by the gatekeeper.

(3) If the child-caring facility makes timely submission of the reports, and if the:

(a) Level of care remains unchanged, payments shall continue unchanged; or

(b) Level of care is reduced, and the:

1. Child remains in the same placement, the lower level of care

shall be effective on the 31st day following the utilization review due date; or

2. Child is placed in another child-caring facility or child-placing agency after the utilization review due date, the rate for the lower level shall be effective on the day the child is placed; or

(c) Level of care is increased, the rate for the higher level of care shall be effective the day after the utilization review due date.

(4) If a child-caring facility, child-placing agency, or the department determines it to be in the best interest of a child to be transitioned from a residential program to another program and the required reports specified in Section 10(3) of this administrative regulation have been submitted on time,[;] and if:

(a) The program is not therapeutic foster care, the rate for the level resulting from the utilization review shall remain in effect until the next scheduled utilization review; or

(b) The new program is therapeutic foster care, the residential rate for the level resulting from the utilization review shall remain in effect for thirty (30) days after the change in placement. On the 31st day the therapeutic foster care rate for the assigned level shall apply.

(5) If the child-caring facility, [or] child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, [or] child-placing agency, or cabinet staff may request a redetermination as specified in Section 12 of this administrative regulation.

Section 12. Redetermination. (1) If the child-caring facility, [or] child-placing agency, or cabinet staff disagrees with the level of care assigned by the gatekeeper, the child-caring facility, [or] child-placing agency, or cabinet staff may request a redetermination of the assigned level by providing to the gatekeeper:

(a) New information which supports the request for a new level; and

(b) Completion of the "request for redetermination" section of one (1) of the following forms:

1. DPP-886, Private Child Care Client Inter-agency [Inter-agency] Referral Form for an initial or reassigned level;

2. CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization form for a utilization review; [or]

3. CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment form for a utilization review; or

4. CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment, form for a reassignment.

(2) If the request for a redetermination is received by the gatekeeper within thirty (30) days after the most recent utilization review or admission, and if the gatekeeper assigns a higher level with a CRP-004, Children's Review Program Notice of Level of Care Redetermination, the increased payment shall be retroactive:

(a) To the date of the most recent utilization review due date; or

(b) The date of admission, whichever is most recent.

(3) If the request for redetermination is received by the gatekeeper more than thirty (30) days after the most recent utilization review or admission, and if a:

(a) Higher level is assigned by the gatekeeper with a CRP-004, the increased payment shall be effective the day after the request is received by the gatekeeper; or

(b) Lower level is assigned by the gatekeeper with a CRP-004, the lower payment shall be effective thirty (30) days after the request is received by the gatekeeper.

(4) If the child-caring facility, [or] child-placing agency, or cabinet staff does not agree with the redetermination as provided by the CRP-004, an appeal may be requested in accordance with Section 14 or 15 of this administrative regulation.

Section 13. Reassignment. (1) If the level of care expires and the child is moved to a different placement, a reassigned level of care shall be obtained by the:

(a) Department completing a level of care packet for a level assignment; or

(b) New child-caring facility or child-placing agency submitting the following[,] within thirty (30) days of the placement:

1. A cover letter requesting a reassignment;

2. An assessment of the child;

3. Documentation to support the level of care assignment, such as the level of care packet or discharge summary; and

4. [2.] If the child has an IQ of seventy (70) or above:

a. Child Behavior Checklist For Ages one and one-half (1 1/2) - five (5) (Achenbach); or

b. Child Behavior Checklist for Ages six (6) - eighteen (18).

(2) The reassigned level of care rate shall be effective on the date of admission to the new placement.

(3) If the child-caring facility or child-placing agency disagrees with the level of care assigned by the gatekeeper, the child-caring facility or child-placing agency may request a redetermination as specified in Section 12 of this administrative regulation.

Section 14. Informal Dispute Resolution. (1) A contract agent dissatisfied by a decision of the cabinet or a gatekeeper may seek informal resolution by filing a request with the secretary of the cabinet, or designee, within ten (10) days following notice of the decision.

(2) Upon receipt of a request for informal resolution, the cabinet shall:

(a) Review the request; and

(b) Render a written decision on the issue raised.

(3) If the dispute relates to a decrease or denial of payment, the contract agent may request an administrative hearing in accordance with Section 15 of this administrative regulation.

Section 15. Administrative Hearing Process. A child-caring facility or child-placing agency may request an administrative hearing in accordance with 922 KAR 1.320.

Section 16. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Child Behavior Checklist for Ages 1 1/2 - 5 (Achenbach)", edition 7/00;

(b) "Child Behavior Checklist for Ages 6-18 (Achenbach)", edition 6/01;

(c) "CRP-001, Children's Review Program Residential Application for Level of Care Payment", edition 11/04;

(d) "CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization", edition 11/04;

(e) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment", edition 7/07,

(f) "CRP-004, Children's Review Program Notice of Level of Care Redetermination", edition 11/04,

(g) "CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment", edition 11/04;

(h) "CRP-006, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization Reassignment", edition 7/07;

(i) "DPP-114, Level of Care Schedule", edition 7/07;

(j) "DPP-886, Private Child Care Client Inter-agency Referral Form",
edition 10/04,

(k) "DPP-886A, Application for Referral and Needs Assessment", edition 07/07;

(l) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child-Caring and Child-Placing Programs and Facilities", edition 10/04;

(m) "Reiss Scales for Children's Dual Diagnosis (Mental Retardation and Psychopathology)", edition 1990; and

(n) "Scales of Independent Behavior-Revised (SIB-R)", edition 1996. ~~["DPP-114, Level of Care Schedule, edition 10/04";~~

~~(b) "DPP-886, Private Child Care Client Inter-agency Referral Form, edition 10/04";~~

~~(c) "Child Behavior Checklist for Ages 1 1/2 – 5 (Achenbach), edition 7/00";~~

~~(d) "Child Behavior Checklist for Ages 6-18 (Achenbach), edition 6/01";~~

~~(e) Reiss Scales for Children's Dual Diagnosis (Mental Retar-~~

~~dation and Psychopathology), edition 1990;~~

~~(f) "Scales of Independent Behavior-Revised (SIB-R), edition 1996";~~

~~(g) "DPP-888, Kentucky Cabinet for Health and Family Services Annual Audited Cost Report and Time Study and Instructions for Completing the Cost Report Time Study Codes and Definitions, and Instructions for the Time Study, for Child Caring and Child Placing Programs and Facilities, edition 10/04";~~

~~(h) "CRP-001, Children's Review Program Residential Application for Level of Care Payment, edition 11/04";~~

~~(i) "CRP-002, Children's Review Program Private Child Care Notice of Level of Care Payment Authorization, edition 11/04";~~

~~(j) "CRP-003, Children's Review Program Foster Care Application for Level of Care Payment, edition 11/04",~~

~~(k) "CRP-004, Children's Review Program Notice of Level of Care Redetermination, edition 11/04"; and~~

~~(l) "CRP-005, Children's Review Program DCBS Foster Care Utilization Review Notice of Level Assignment, edition 11/04".~~

] (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. WASHINGTON, Commissioner
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: June 27, 2007
FILED WITH LRC: June 28, 2007 at 4 p m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 5W-B, Frankfort, Kentucky 40621, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle, DCBS Regulation Coordinator

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the five levels of care based upon the needs of a child for whom the cabinet has legal responsibility, a payment rate for each level, responsibilities of the gatekeeper, provider requirements, procedures for classification at the appropriate level of care, and procedures for determination of components of the model program cost analysis.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the policy and procedures for placement of a child committed to the cabinet with a private child care provider, levels of care and related payments, responsibilities/requirements of the gatekeeper and private provider, and rate setting methodology.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to KRS 194A.050(1), 199.641(4), 605.090(1)(d), and 605.150(1) by establishing the rate setting methodology, methodology for placement of a child committed to the cabinet with a private child care provider, levels of care, reimbursement rates, and related provider and gatekeeper responsibilities/requirements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes through its incorporation of the methodology regarding the placement of a child committed to the cabinet with a private child care provider, procedures concerning the model program cost analysis, provider and gatekeeper requirements, levels of care, and payment rate for each level of care.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation increases the private child care provider rates in accordance with HB 380 2006 General Assembly, updates incorporated materials, and makes technical corrections and clarifications to comply with KRS Chapter 13A and best practice.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to implement the private child care provider rate increases included in HB 380 2006 GA, ensure the health and safety of children in private placements, provide clarifications per communications with the private provider community, the Children's Alliance, and the Children's Review Program, and make corrections to comply with KRS Chapter 13A.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes through its incorporation of private child care provider rate increases to comply with the effective date of the provision concerning the same contained in HB 380 2006 GA.

(d) How the amendment will assist in the effective administration of the statutes: In addition to compliance with HB 380 2006 GA, the amendment also clarifies procedures and responsibilities contained within the administrative regulation, and makes technical corrections to comply with KRS Chapter 13A.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: As of May 2007, the Children's Review Program's database indicated that 3,340 children committed to the cabinet are placed in out-of-home care with a private child care provider. There are 57 private child care providers who have an existing agreement with the cabinet for out-of-home care services.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Responsibilities, including incorporated materials, have been updated to reflect best practice and aid the determination of an appropriate level of care for a child currently in (or being placed in) a private child care placement.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs to the regulated entities as a result of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Private child care providers will realize a three dollar increase in each reimbursement rate per day for each child committed to the cabinet in their care, in accordance with HB 380 2006 GA.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The projected fiscal impact of this administrative regulation for fiscal year 2007-2008 is $10,457,100. HB 380 included $3.43 million for $3 increases to private child care providers. Additional increases are estimated to cost $7.03 million. CHFS officials plan to drawn down additional federal and restricted funds to cover these increases for State Fiscal Year 2007-2008.

(b) On a continuing basis: If the next biennium budget does not include funding to sustain the additional increases, the private child care provider reimbursement rates will revert back to include only the $3 increase with an estimated $3.43 million in annual cost plus any growth in the number of committed children in private child care provider settings.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Title IV-E and state funds are the source of funding for this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: An increase of funding was provided to the cabinet through HB 380 2006 GA. There is no increase in fees to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied, as this administrative regulation will be applied in a like manner statewide.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 672, OMB Circular A-122

2. State compliance standards. KRS 194A 050(1), 199.641(4), 605 090(1)(d), 605.150(1)

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 672, OMB Circular A-122

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This administrative regulation does not impose stricter requirements or additional or different responsibilities or requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services is impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 U.S.C. 672, OMB Circular A-122, KRS 194A.050(1), 199.641(4), 605.090(1)(d), 605.150(1)

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? The projected fiscal impact of this administrative regulation for fiscal year 2007-2008 is $10,457,100. HB 380 included $3.43 million for $3 increases to private child care providers. Additional increases are estimated to cost $7.03 million. CHFS officials plan to drawn down additional federal and restricted funds to cover these increases for State Fiscal Year 2007-2008.

(d) How much will it cost to administer this program for subsequent years? If the next biennium budget does not include funding to sustain the additional increases, the private child care provider reimbursement rates will revert back to include only the $3 increase with an estimated $3.43 million in annual cost plus any growth in the number of committed children in private child care provider settings.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:160. Child Care Assistance Program.

RELATES TO: KRS 45.237-45.241, 81.010, 186.040, 199.892, 199.894(1), 199.896, 199.898(1), (2), 199.8982, 199.899, 199.8994[(1), (2), (6)], 202A.011(12), 214.036, 314.011(5) 605.120(5), 620.020(9), 7 C.F.R. 1464.201, 45 C.F.R. 98, 400.66(d) 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723(a)(5), 38 U.S.C. 1815, 42 U.S.C. 601-619, 1451, 1771, 1775, 2000d, 3001, 5001, 5011, 9902(2), 10601(c)

STATUTORY AUTHORITY: KRS 194A.050(1), 199.892, 199.8994

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.892 enables the Cabinet for Health and Family Services to qualify to receive federal funds under provisions of the federal Social Security Act, 42 U.S.C. 601-619 and to provide for effective regulation of child care centers. KRS 199.8994 requires the cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation enables the Cabinet for Health and Family Services to qualify for federal funds under the Child Care and Development Fund, and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

Section 1. Definitions. (1) "Applicant" means a child's natural or adoptive parent or an individual caring for a child in loco parentis

(2) "Cabinet" is defined by KRS 199.894(1)

(3) "Change in a circumstance" means a change that affects eligibility or benefit amounts and includes:

(a) Beginning or ending employment;

(b) Change in an employer or obtaining additional employment;

(c) Increase or decrease in the number of work hours;

(d) Increase or decrease in the rate of pay;

(e) Increase or decrease in family members;

(f) Change in self-employment activity;

(g) Change in scheduled hours care is needed;

(h) Beginning or ending an educational activity;

(i) Change in child care provider;

(j) Change in address or residence; or

(k) Change in marital status.

(4) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(5) "Child care and development fund" or "CCDF" is defined in 45 C.F.R. 98.2.

(6) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families, who meet the eligibility requirements of this administrative regulation, with the financial resources to find and afford quality child care.

(7) "Child care certificate" is defined in 45 C.F.R. 98.2.

(8) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(9) "Child with a special need" means a child who has multiple

or severe problems that require ongoing specialized care.

(10) "Employment" means public or private, permanent or temporary work for an average of twenty (20) hours per week for:

(a) Wages;

(b) Self-employment;

(c) Student teaching, internship or practicum; or

(d) A combination of the above.

(11) "Family" means an applicant and a child related by blood or law who reside in the same residence and another responsible adult if present.

(12) "Family child-care home" is:

(a) Defined by KRS 199.894(5);

(b) Described in KRS 199.8982; and

(c) A home certified in accordance with 922 KAR 2:100.

(13) "Full day" means child care is provided for five (5) or more hours per day.

(14)" Health professional" means a person actively licensed as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner;

(d) Qualified mental health professional as defined in KRS 600.020(47); or

(e) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician.

(15) "In loco parentis" means a person acting in place of a parent, including:

(a) A legal guardian, or

(b) An individual related by blood, marriage or adoption to the child.

(16) "Infant" means a child who is less than one (1) year old.

(17) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(18) "Non-urban" means a county without a first, second, or third class city as specified in KRS 81.010(1) through (3).

(19) "Part day" means child care is provided for less than five (5) hours per day.

(20) "Preschool child" means a child, who has reached the third birthday up to, but not including, the sixth birthday.

(21) "Preventive services" is defined by KRS 620.020(9).

(22) "Provider" means the entity providing child care services.

(23) "Qualified alien" means a child who meets the U.S. citizenship requirements of 921 KAR 2:006, Section 1(12).

(24) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(25) "Related" means the child, stepchild, grandchild, great-grandchild, niece, nephew, sibling or child in legal custody of the child care provider.

(26) "Responsible adult" means a person who is in the child's household who is:

(a) The natural, adoptive or step parent; or

(b) The spouse of an individual caring for a child in loco parentis.

(27) "School-age child" means a child who has reached the sixth birthday.

(28) "Teenage parent" means a parent who is:

(a) Nineteen (19) years of age or younger; and

(b) Attending high school or pursuing a GED.

(29) "Toddler" means a child who has reached the first birthday up to, but not including, the third birthday.

(30) "Urban" is defined as a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.

Section 2. Application Rights and Requirements. (1) An individual may apply or reapply for CCAP through the cabinet or its designee.

(2) Unless an applicant is approved according to the criteria in Section 5 or 6 of this administrative regulation:

(a) An application shall have been made:

1. On the date:

a. An individual or a representative for the individual signs the application form DCC-90, Application for Subsidized Child Care Assistance, or a DCC-90.1, Intent to Apply for Child Care Assistance; and

b. The application is received at the cabinet or its designee office; or

2. On the date the agency is contacted, if the person:

a. Has a physical or mental disability; and

b. Needs special accommodation due to the impairment.

(b) If the individual or recipient is physically unable to come to the office to apply, the individual or recipient may designate an authorized representative to make application.

(c) The applicant may be:

1. Assisted by another individual of choice in the application process; and

2. Accompanied by the individual in a contact with the agency.

(d) In accordance with the procedures described in 920 KAR 1:070, interpreter services shall be provided for persons who are:

1. Deaf; or

2. Hard of hearing.

(e) Interpreter services shall be provided for a non-English speaking individual, utilizing procedures and forms specified by Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000d.

(3) The cabinet or its designee shall not discriminate against an applicant based on age, race, color, sex, disability, religious creed, national origin or political beliefs.

(4) For the month child care payment is intended to cover, a family shall meet the technical and financial eligibility criteria, according to its particular circumstances, as described in Sections 3, 4, 5, 6, and 7 of this administrative regulation.

(a) The applicant or recipient shall be the primary source of information and shall:

1. Furnish verification of:

a. Income; and

b. Technical eligibility; and

2. Give written consent to the cabinet or its designee necessary to verify information pertinent to the decision of eligibility.

(b) Upon receiving written notice of a request for information or a scheduled appointment to present required documentation, failure of an applicant or recipient to respond shall be considered a failure to comply with presentation of adequate proof of eligibility.

(5) A decision shall be made on an application and written notification sent to the applicant within thirty (30) calendar days of submitting the application form.

(6) Each decision regarding eligibility for assistance shall be supported by documentation recorded in the applicant or recipient's case record.

(7) A family shall not receive:

(a) Assistance until approval of the application for benefits; or

(b) Benefits prior to application.

Section 3. Technical Eligibility. (1) A child shall be eligible for child care assistance, if the child:

(a) Is a resident of Kentucky; and;

(b) Is a U.S. citizen or qualified alien;

(c) Is under age:

1. Thirteen (13); or

2. Nineteen (19) and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a:

(i) Health professional;

(ii) Collateral agency approved by the cabinet, including a school or comprehensive care center; or

(iii) Cabinet employee or designee through a child protective service or preventive service authorization;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(d) Has a current immunization certificate showing that the child is immunized unless:

1. There is an exception pursuant to KRS 214.036; or

2. The child is attending a:

a. Licensed child care center;

b. Certified child care home;

c. Public school;

d. Head Start; or

e. Other entity that requires the immunization record.

(2) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) calendar days while the family takes necessary action to comply with the immunization requirement.

(3) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) A member of the K-TAP or food stamp assistance case in which the child in need of child care assistance is included;

(d) A person living in the same home as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) An alternative program such as Head Start, state preschool or state kindergarten; or

(g) Another child care provider if the family operates the child care business in the home.

(4) If the restrictions specified in subsection (3) of this section do not apply to the provider related to the child, the provider related to the child may be eligible for payment from CCAP.

Section 4. Requirements for Low Income Working Family Eligibility Determination. A child may be eligible to receive CCAP if the child resides with:

(1) An applicant who has employment an average twenty (20) hours per week;

(2) An applicant and a responsible adult who have employment an average of forty (40) hours per week combined, if the individual with the least employment has an average of at least five (5) hours of employment per week;

(3) An applicant and a responsible adult if either the applicant or the responsible adult has employment an average of twenty (20) hours per week, and the other is physically or mentally unable to provide adequate care or supervision as documented by a written statement from a health professional; or

(4) A relative caregiver pursuant to the conditions of KRS 605.120(5), who:

(a) Meets all requirements in this section; and

(b) Meets income eligibility standards in Section 7(1).

Section 5. Requirements for Protection and Permanency Eligibility Determination. (1) A child may be eligible to receive CCAP if the child:

(a) Resides with an applicant who:

1. Receives child protective or preventive services; or

2. Needs to receive child protective or preventive services based upon an assessment conducted by child protective services staff pursuant to 922 KAR 1:330; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application, as an integral part of a protective or preventive services plan.

(3) A child who participates in the CCAP as a result of a child protective or preventive services authorization:

(a) Shall not be eligible for more than six (6) months without further authorization; and

(b) May have the family copayment required by Section 10 of this administrative regulation waived by the cabinet. If the family copayment is waived, the reason for the waiver shall be documented in the protective or preventive services plan.

Section 6. Kentucky Works Child Care Eligibility Determination. (1) A child may be eligible for CCAP if the child:

(a) Resides with an applicant who is participating in the Kentucky Works Program described in 921 KAR 2:370; and

(b) Meets the requirements listed in Section 3 of this administrative regulation.

(2) A child shall be approved for child care assistance by the cabinet in accordance with subsection (1) of this section without a separate application as an integral part of a Kentucky Works Program self sufficiency plan.

Section 7. Income Eligibility. (1) A child shall be eligible for the CCAP if the family's income is less than or equal to:

(a) 150 percent of the federal poverty level at the initial application; or

(b) 165 percent of the federal poverty level at the redetermination.

(2) A family that becomes ineligible for K-TAP shall remain eligible for CCAP if the family's income remains less than or equal to 165 percent of the federal poverty level.

(3) Except for a child who is eligible as specified in Section 5 of this administrative regulation, gross income received or anticipated to be received by the applicant and responsible adult shall be considered when the cabinet or its designee determines the family's eligibility for the CCAP.

(4) A child that is eligible for CCAP as specified in Section 5 of this administrative regulation shall be eligible without regard to the family's income.

(5) Excluded income shall be:

(a) All income received by or on behalf of a child;

(b) K-TAP child only payments, including back payment;

(c) A payment received from the Kinship Care Program, pursuant to 922 KAR 1:130, including back payment;

(d) Educational grant, loan, scholarship, and work study income, including:

1. Payment obtained and used under a condition that precludes the recipient's use for current living cost; and

2. An education grant or loan to an undergraduate made or insured under a program administered by:

a. The United States Commissioner of Education; or

b. The Bureau of Indian Affairs;

(e) The value of Kentucky Works supportive services payment pursuant to 921 KAR 2:017;

(f) The value of United States Department of Agriculture program benefits including:

1. Donated food;

2. Supplemental food assistance received pursuant to 42 U.S.C. 1771;

3. Special food service program for a child pursuant to 42 U.S.C. 1775;

4. Nutrition program for the elderly pursuant to 42 U.S.C. 3001; and

5. The monthly food stamp allotment;

(g) Payment made directly to a third party on behalf of the applicant or recipient by a non-responsible person;

(h) In-kind income;

(i) Reimbursement for transportation in performance of an employment duty, if identifiable;

(j) Nonemergency medical transportation payment;

(k) Highway relocation assistance;

(l) Urban renewal assistance;

(m) Federal disaster assistance and state disaster grant;

(n) Home produce utilized for household consumption;

(o) Housing subsidy received from federal, state or local governments;

(p) Receipt distributed to a member of certain Indian tribes by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(q) Funds distributed per capita to or held in trust for a member of an Indian tribe by the federal government pursuant to 25 U.S.C. 459, 1261 and 1401;

(r) Payment for supporting services or reimbursement of out-of-pocket expense made to an individual volunteering as:

1. Senior health aide; or

2. Member of the:

a. Service Corps of Retired Executives; or

b. Active Corps of Executives;

(s) Payment made to an individual from a program pursuant to U.S.C. 4950 to 5084 if less than the minimum wage under state or federal law, whichever is greater, including:

1. Volunteers in Service to America (VISTA);

2. Foster Grandparents;

3. Retired and Senior Volunteer Program; or

4. Senior Companion.

(t) Payment from the cabinet for:

1. Child foster care; or

2. Adult foster care;

(u) Energy assistance payment made under:

1. The Low Income Home Energy Assistance Program pursuant to 42 U.S.C. 8621; or

2. Other energy assistance payment made to an energy provider or provided in-kind;

(v) The principal of a verified loan;

(w) Up to $12,000 to Aleuts and $20,000 to an individual of Japanese ancestry for payment made by the United States Government to compensate for a hardship experienced during World War II;

(x) The advance payment or refund of earned income tax credit;

(y) Payment made from the Agent Orange Settlement Fund.

(z) Payment made from the Radiation Exposure Compensation Trust
Fund;

(aa) Up to $2,000 per year of income received by individual Indians denied from a lease or other use of individually-owned trust or restricted lands;

(bb) Payment made to an individual because of the individual's status as a victim of Nazi persecution;

(cc) Income received from temporary employment from the United States Department of Commerce, Bureau of the Census;

(dd) A payment received from the National Tobacco Growers Settlement Trust;

(ee) A Tobacco Loss Assistance Program payment pursuant to 7 C.F.R. 1464.201;

(ff) A payment received from a crime victim compensation program according to the Antiterrorism and Effective Death Penalty Act of 1996 pursuant to 42 U.S.C. 10602(c);

(gg) A payment made, pursuant to 38 U.S.C. 1815 by the Veteran's Administration, to children of female Vietnam veterans.

(hh) A discount or subsidy provided to Medicare beneficiaries pursuant to Section 1860D-31(g)(6) of the Social Security Act;

(ii) Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement Programs pursuant to 45 C.F.R. 400.66(d); or

(jj) Reimbursement payment for a vocational rehabilitation individual participating in Preparing Adults for Competitive Employment pursuant to 29 U.S.C. 723(a)(5).

(6) Deductions from gross income shall be:

(a) Actual, legally obligated child support payment made by the applicant or responsible adult to a party not living in the family's residence; and

(b) Operating costs to determine adjusted gross income from self employment.

(7) Best estimate.

(a) Gross income shall be computed by using a best estimate of income that may exist in the benefit month.

(b) The following method shall be used to calculate a best estimate of earned income other than earned self-employment:

1. Cents shall not be rounded at any step in the calculation;

2. Unless it does not represent the ongoing situation, income from all pay periods in the preceding two (2) calendar months shall be used;

3. A monthly amount shall be determined by:

a. Adding gross income from each pay period;

b. Dividing by the total number of pay periods considered; and

c. Converting the pay period figure to a monthly figure by multiplying a:

(i) Weekly amount by 4.334;

(ii) Biweekly amount by 2.667; or

(iii) Semimonthly amount by two (2); and

4. If income has recently begun and the applicant or recipient has not received two (2) calendar months of earned income, the anticipated monthly income shall be computed by:

a. Multiplying the:

(i) Hourly rate by the estimated number of hours to be worked in a pay period; or

(ii) Daily rate by the estimated number of days to be worked in the pay period; and

b. Converting the resulting pay period figure to a monthly amount pursuant to subparagraph 3c of this paragraph.

(c) For a case with unearned income, other than unearned self-employment income, a monthly amount shall be determined by:

1. Not rounding cents at any step in the calculation;

2. Using the gross monthly amount of continuing, stable unearned income received on a monthly basis; and

3. Averaging the amount of nonstable unearned income received in the three (3) prior calendar months, unless it does not represent the ongoing situation.

(d) For a case with self-employment income, a monthly amount shall be determined as follows:

1. Cents shall not be rounded at any step in the calculation.

2. If the self-employment enterprise has been in operation for at least a year, the income shall be prorated by dividing the income from the last calendar year by twelve (12);

3. If the self-employment enterprise has been in operation for less than a year, the income shall be prorated by dividing by the number of months the business has been in existence; and

4. Profit shall be determined by:

a. Dividing the allowable expenses permitted by the Internal Revenue Service by:

(i) Twelve (12) if the enterprise has been in operation for at least a year; or

(ii) The number of months the business has operating if the business has been in existence for less than a year; and

b. Subtracting the monthly expense from the monthly income.

Section 8. Continuing Eligibility. (1) Continued eligibility under the CCAP shall be re-determined:

(a) At least every twelve (12) months; or

(b) At least every six (6) months for a child eligible pursuant to requirements in Section 5 of this regulation.

(2) Eligibility shall be reviewed and recalculated if necessary due to a known or reported change in circumstance.

Section 9. Payment Rates and Policy. (1) To the extent funds are available, the cabinet shall make payments as listed in the DCC-300, Kentucky Child Care Maximum Payment Rates Chart.

(a) The rates in the DCC-300 represent the maximum payment rates on a per day, per child, per child care provider basis.

(b) The maximum payment rates include the following categories:

1. Full day;

2. Part day;

3. Urban;

4. Nonurban;

5. Licensed;

6. Certified;

7. Registered;

8. Infant/Toddler;

9. Preschool; and

10. School-age.

(2) To the extent funds are available, a licensed or certified provider may receive:

(a) Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

1. National Association for the Education for Young Children;

2. National Early Childhood Program Accreditation;

3. National Association for Family Child Care;

4. National After School Association; or

5. Other accrediting body approved by the Early Childhood Development Authority or the cabinet; or

(b) One (1) dollar per day beyond the maximum rate for non-traditional care for providing child care assistance between:

1. 6 p.m. to 6 a.m.; or

2. Friday, 6 p.m. through Monday, 6 a.m.

(3) To the extent funds are available, a licensed, certified, or registered provider may receive a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

(a) With a special need; or

(b) Who is between age thirteen (13) and nineteen (19) and is:

1. Physically or mentally incapable of caring for himself as determined by a health professional; or

2. Under court supervision.

(4) The cabinet or its designee shall determine the maximum daily reimbursement rate not to exceed the amount charged to the general public.

(5) A child care provider registered according to 922 KAR 2:180 shall not be paid for more than:

(a) Three (3) children receiving CCAP per day; or

(b) Six (6) children receiving CCAP per day, if those children are a part of a sibling group.

(6) A family meeting the requirements of Section 4 or 6 of this administrative regulation shall be eligible for payment to cover child care needs due to full-time or part-time enrollment in an educational program.

(7) To the extent funds are available, required annual enrollment fees shall be paid one (1) time each twelve (12) month period for a family meeting the requirements in Section 6 of this administrative regulation.

Section 10. Family Copayment. (1) The family of a child served by the CCAP shall be responsible for a copayment in accordance with the family co-payment formula in subsection (3)(a) of this section unless:

(a) The family copayment has been waived under a protection or prevention services authorization; or

(b) If beginning January 1, 2008, the family's total gross countable income is at or below 100 percent of the federal poverty guidelines as updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2).

(2) If a court orders a parent of a CCAP-eligible child to pay a portion of the child's child care expenses, that payment shall be in lieu of the family copayment required by subsection (3) of this section.

(3) The cabinet or its designee shall determine a copayment that the family shall pay to the provider for the cost of child care, based on the following formula:

(a) The income ranges for assessing the family copayment for each household size shall increase in standard increments based on the federal poverty guidelines;

(b) The income ranges for each household size shall:

1. Begin with the monthly federal poverty guideline for the family household size plus one (1) dollar; and

2. End with:

a. The monthly federal poverty guideline for the next highest household size; or

b. 165 percent of the federal poverty guidelines for the family household size, whichever comes first, and

(c) The family copayment shall be:

1. Assessed at eight (8) percent of the lowest amount in the income range; and

2. Converted to a daily copayment amount by dividing this figure by twenty-two (22), the average number of work days in a month.

(3)(a) The family copayment formula shall be effective January 1, 2008; or

(b) Unless the income of the child's family is at or below 100% of the federal poverty level as prescribed annually by the U.S. Department of Health and Human Services, the copayment for a child who was in the CCAP prior to January 1, 2008, shall remain unchanged until the next action involving the child's eligibility, including:

1. A change in the circumstances of the child or the child's family; or

2. An eligibility re-determination of the child and the child's family.

(4) If a provider notifies the cabinet or its designee that a family has not complied with a required copayment for two (2) weeks:

(a) The cabinet or its designee shall develop a payment plan with the family;

(b) The CCAP shall not make payment to a subsequent provider until the family demonstrates compliance with the payment plan, unless approval is granted by the cabinet or its designee due to:

1. A disaster;

2. Closure of a provider;

3. Family circumstances, such as relocation, illness, or death; or

4. A risk to the health, welfare, or safety of the child or parent; and

(c) CCAP payments may be suspended during the period in which back payment is owed to the provider.

Section 11. Family Rights and Responsibilities. (1) The family of a child served by the CCAP shall have rights pursuant to KRS 199.898(1) and (2).

(2) Unless an alternative program such as Head Start, state preschool or state kindergarten is available and accessible during the time child care is needed, an applicant for a child who receives or has been approved to receive CCAP benefits shall:

(a) Be offered choice of child care assistance subject to the availability of state and federal funds; and

(b) Receive a child care certificate, DCC-94, Child Care Service Agreement and Certificate.

(3) An applicant may change the applicant's provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to:

(a) A disaster;

(b) Closure of a provider;

(c) Family circumstances, such as relocation, illness, or death; or

(d) A risk to the health, welfare, or safety of the child or the applicant.

(4) A family that changes the child care provider more than three (3) times as described in Section 11(3) of this administrative regulation shall be discontinued from the CCAP and unable to participate until the end of the eligibility period in effect at the time of discontinuance.

(5) An applicant for a child served by CCAP shall advise the cabinet or its designee of a change in circumstance within ten (10) calendar days of the day the change is known.

(6) Failure to report a change in circumstance may result in a decrease or discontinuance of CCAP benefits.

Section 12. Cabinet Requirements. (1) The DCC-94 shall:

(a) Be used for child care assistance provided by a licensed, certified, or registered provider; and

(b) Not be considered a contract, employment or grant to the child care provider, but shall be considered assistance to the applicant pursuant to 45 C.F.R. 98.30(c)(6).

(2) The cabinet or its designee shall provide consumer information regarding conditions for termination of the DCC-94 pursuant to KRS 199.8994(6)(b).

(3) The cabinet or its designee shall assure that a provider of child care assistance funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:090, Child care center licensure;

(b) 922 KAR 2:100, Certification of family child care homes;

(c) 922 KAR 2:110, Child care facility provider requirements;

(d) 922 KAR 2:120, Child care facility health and safety standards; and

(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.

(4) If CCAP benefits are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to each family receiving child care assistance.

(5) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) calendar day notice to licensed, certified, or registered providers.

(6) The recipient shall be given ten (10) calendar days advance notice of the proposed action if a change in circumstances indi-

cates:
(a) A child care benefit shall be:
1. Reduced;
2. Suspended; or
3. Discontinued; or
(b) An individual shall be removed from the child care benefit.
(7) The ten (10) calendar days advance notice of the proposed action shall:
(a) Be given on the DCC-105, Notice of Adverse Action;
(b) Explain the reason for the proposed action;
(c) Cite the applicable state administrative regulation; and
(d) Extend the opportunity to confer with the child care worker or to request an appeal pursuant to Section 17 of this administrative regulation.
(8) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:
(a) Child protective services or preventive services authorization;
(b) A child with a special need;
(c) A teen parent;
(d) A K-TAP recipient attempting through employment to transition off assistance;
(e) An applicant whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment; or
(f) A low income working applicant.

Section 13. Provider Requirements. (1) A licensed, certified, or registered child care provider that serves a child who participates in the CCAP shall:
(a) Sign and submit the DCC-94 to the cabinet or its designee prior to receiving payment from the CCAP;
(b) Report all absences on the DCC-97, Provider Billing Form, submitted to the cabinet or its designee; and
(c) Maintain and submit, upon request of the cabinet or its designee, a monthly sign-in sheet in which the daily arrival and departure times of each child have been recorded.
(2) A licensed or certified child care provider shall complete the DCC-94B, Licensed or Certified Provider Information Form, prior to receiving payment from the CCAP.
(3) A registered child care provider shall complete all requirements of 922 KAR 2:180 prior to receiving payment from the CCAP.
(4) A licensed child care provider shall maintain written documents with attendance records stating the reason for any absence of a child receiving CCAP in excess of five (5) per month per child.

Section 14. Other Services. To the extent state funds are available, a child whose family's income is over the income limits for the CCAP described in Section 7 of this administrative regulation may be eligible for:
(1) Child care payments;
(2) Enrollment fees;
(3) Activity or day trip fees;
(4) Material fees;
(5) Transportation fees; or
(6) Other items relating to child care services with prior approval of the cabinet.

Section 15. Erroneous Payments. (1) The cabinet or its designee shall investigate each:
(a) Instance of apparent erroneous payment; and
(b) Allegation of fraud related to a:
1. CCAP recipient family; or
2. Child care provider.
(2) Action shall be promptly taken to correct the payment in an active case.
(3) If an overpayment has occurred, the cabinet or its designee shall:
(a) Determine the amount of the erroneous payment; and
(b) Establish a claim to recover the amount of the overpayment.
(4) If an overpayment has occurred and fraud is suspected, the cabinet shall determine the efficacy of pursuing a judicial remedy prior to attempting to recover the amount of the overpayment through an administrative process.
(5) If a claim has been established, and a judicial remedy has been determined by the cabinet to be inappropriate, the cabinet or its designee shall:
(a) Advise the affected party of the claim; and
(b) Establish a repayment agreement using form DCC-98, Repayment Agreement, for the purpose of recovering a CCAP overpayment from the:
1. Applicant; or
2. Child care Provider.
(6) Payments under the CCAP shall be discontinued if a family or provider:
(a) Refuses to sign a DCC-98; or
(b) Defaults on more than three (3) payments under a completed repayment agreement.
(7) If a family or provider reapplies for CCAP benefits after discontinuance from the program for noncompliance with a repayment agreement, as described in subsection (6) of this section, the cabinet or its designee shall reapprove CCAP benefits upon payment of the overdue installments.
(8) If a family or provider reapplies for CCAP benefits after discontinuance from the program for refusal to sign a DCC-98 as described in subsection (6) of this section, the cabinet or its designee shall reapprove CCAP benefits upon signing of the DCC-98 and payment of the overdue installments.
(9) If an underpayment has occurred, the cabinet or its designee shall:
(a) Determine the amount owed; and
(b) Issue a refund to the affected party.
(10) If both an overpayment and an underpayment exists for an individual family or provider, the overpayment and underpayment shall be offset one against the other.

Section 16. Criteria for Nonpayment. (1) Payment under the CCAP shall:
(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to verify in writing, and maintain attendance records verifying, that the additional absences were related to:
1. A death in the extended family;
2. Illness of:
a. Child; or
b. Applicant;
3. Court orders, or
4. Disaster.
(b) Not be made to a certified provider for more than five (5) absences per child during a month;
(c) Not be made to a registered provider for any absences;
(d) Be denied in accordance with KRS 199.8994(6);
(e) Cease if a family or provider:
1. Defaults on three (3) payments under a repayment agreement with the cabinet or its designee; or
2. Refuses to sign a DCC-98; or
(f) Not be made if a family no longer meets the technical or financial eligibility requirements under the CCAP.
(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 12(8) of this administrative regulation.

Section 17. Appeals. The cabinet or its designee shall inform a family that:
(1) Appeal of a denial, reduction, suspension, or termination of benefits shall be submitted in writing to the cabinet or its designee within thirty (30) calendar days of the date of the negative action.
(2) If a family appeals a:
(a) Reduction of benefits, child care assistance benefits shall be available at the reduced level during the appeal; or
(b) Suspension or termination of benefits, child care assistance benefits shall not be available during the appeal.

Section 18. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90, Application for Subsidized Child Care Assistance", edition 11/07;

(b) "DCC-90.1, Intent to Apply for Child Care Assistance", edition 11/07;

(c) "DCC-94, Child Care Service Agreement and Certificate", edition 11/07;

(d) "DCC-94B, Licensed or Certified Provider Information Form", edition 11/07;

(e) "DCC-97, Provider Billing Form", edition 11/07;

(f) "DCC-98, Repayment Agreement", edition 11/07;

(g) "DCC-105, Notice of Adverse Action", edition 11/07; and

(h) "DCC-300, Kentucky Child Care Maximum Payment Rates Chart", edition 11/07.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 am through 4:30 pm. [(1) "Cabinet" is defined in KRS 199.894.

(2) "Central region" means Adair, Anderson, Boone, Bourbon, Boyle, Bullitt, Campbell, Carroll, Casey, Clark, Clinton, Cumberland, Estill, Fayette, Franklin, Gallatin, Garrard, Grant, Green, Harrison, Henry, Jefferson, Jessamine, Kenton, Lincoln, Madison, McCreary, Mercer, Nicholas, Oldham, Owen, Pendleton, Powell, Pulaski, Russell, Scott, Shelby, Spencer, Taylor, Trimble, Wayne, and Woodford counties.

(3) "Child care" means the provision of care for a child for a portion of a day on a regular basis, designed to supplement, but not substitute for, the parent's responsibility for the child's protection, development, and supervision.

(4) "Child care and development fund" or "CCDF" is defined in 45 C.F.R. 98.2.

(5) "Child Care Assistance Program" or "CCAP" means Kentucky's child care subsidy program providing families who meet the technical eligibility requirements of Section 2 of this administrative regulation with the financial resources to find and afford quality child care.

(6) "Child care certificate" is defined in 45 C.F.R. 98.2.

(7) "Child protective services" is defined in 922 KAR 1:330, Section 1(3).

(8) "Child with a special need" means a child who has multiple or severe problems that require ongoing specialized care.

(9) "East region" means Bath, Bell, Boyd, Bracken, Breathitt, Carter, Clay, Elliott, Fleming, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Lawrence, Laurel, Lee, Leslie, Letcher, Lewis, Magoffin, Martin, Mason, Menifee, Montgomery, Morgan, Owsley, Perry, Pike, Robertson, Rockcastle, Rowan, Whitley, and Wolfe counties.

(10) "Employment" means public or private, permanent or temporary work for a minimum of twenty (20) hours per week for a wage that is paid, including self-employment.

(11) "Family" means one (1) or more adults and a child or children related by blood or law, including a stepparent or other person standing in loco parentis who resides in the same residence as the child.

(12) "Family child care home" is:

(a) Defined in KRS 199.894(5);

(b) Described in KRS 199.8982; and

(c) Certified in accordance with 922 KAR 2:100.

(13) "Full day" means child care is provided for five (5) or more hours per day.

(14) "Kentucky Transitional Assistance Program" or "K-TAP" means Kentucky's Temporary Assistance for Needy Families or "TANF" money payment program established in 921 KAR Chapter 2.

(15) "Infant" means a child who is less than twelve (12) months of age.

(16) "Nonurban" means a county without a first, second, or third class city in KRS 81.010(1) through (3).

(17) "Parent" is defined in 45 C.F.R. 98.2.

(18) "Part day" means child care is provided for less than five (5) hours per day.

(19) "Preschool" means a child more than thirty-six (36) months of age and not attending kindergarten or elementary education.

(20) "Preventive services" is defined in KRS 620.020(9).

(21) "Provider" is defined in 45 C.F.R. 98.2.

(22) "Qualified alien" means a child who meets the U.S. citizenship requirements of 921 KAR 2:006, Section 1(12).

(23) "Registered provider" means a child care provider who meets the requirements of 922 KAR 2:180.

(24) "Related" means that a child care provider and a child under the provider's care have one (1) of the following familial or legal relationships:

(a) Parent and biological or adopted child;

(b) Step parent and step child;

(c) Grandparent and grandchild;

(d) Great grandparent and great grandchild;

(e) Sibling;

(f)1. Aunt or uncle; and

2. Niece or nephew; or

(g) Child custodian and child.

(25) "School-age child" means a child attending kindergarten, elementary, or secondary education.

(26) "Self-employment" means earning one's livelihood directly from one's own trade or business for a minimum of twenty (20) hours per week and excludes employment in an individual's residence in which:

(a) The individual does not leave the residence, and

(b) Customers do not enter the residence.

(27) "Teenage parent" means a parent who is:

(a) Nineteen (19) years of age or younger; and

(b) Attending high school or pursuing a GED.

(28) "Toddler" means a child twelve (12) months of age and up to an including thirty-six (36) months of age.

(29) "Urban" is defined as a county listed in KRS 81.010(1) through (3) as having a first, second, or third class city.

(30) "West region" means Allen, Ballard, Barren, Breckenridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Edmonson, Fulton, Grayson, Graves, Hancock, Hardin, Hart, Henderson, Hickman, Hopkins, Larue, Livingston, Logan, Lyon, Marion, Marshall, McCracken, McLean, Meade, Metcalfe, Monroe, Muhlenberg, Nelson, Ohio, Simpson, Todd, Trigg, Union, Warren, Washington, and Webster counties.

Section 2. Technical Eligibility. (1) A child shall be eligible for a service, if the child:

(a) Is:

1. A resident of Kentucky; and

2. A U.S. citizen or qualified alien;

(b) Is under age:

1. Thirteen (13); or

2. Nineteen (19) and is:

a. Physically or mentally incapable of caring for himself, as demonstrated by a written document provided by a:

(i) Physician;

(ii) Licensed or certified psychologist;

(iii) Qualified mental health professional as defined in KRS 202A.011(12);

(iv) Collateral agency approved by the cabinet, including a school or comprehensive care center; or

(v) Cabinet employee or designee through a child protective services or preventive services authorization;

b. Under court supervision; or

c. Identified as a priority by federal statute, regulation, or funding source; and

(c)1. Resides with a parent who is a teenage parent;

2. Resides with a parent who:

a. Receives child protective services, or needs to receive child protective services based upon an assessment conducted by the cabinet's protection and permanency staff pursuant to 922 KAR 1:330, except:

(i) A child who participates in the CCAP as a result of a child protective services authorization shall be eligible without regard to the family's income; and

(ii) The child care copay required by Section 3(1)(b) of this administrative regulation may be waived by the cabinet or its designee due to the family's protective services needs or related circumstances; or

b. Receives child preventive services, or needs to receive child preventive services based upon an assessment conducted by the cabinet's protection and permanency staff pursuant to 922 KAR 1:330, except:

(i) A child who participates in the CCAP as a result of a preventive services authorization shall be eligible without regard to the family's income;

(ii) The child care copay shall be assessed in accordance with Section 3(1)(b) of this administrative regulation, unless waived by the cabinet or its designee due to the family's preventive services needs or related circumstances; and

(iii) A child shall not be eligible for more than one (1) year per authorization;

3. Resides with a parent whose family's income does not exceed 150 percent of the federal poverty level when the initial application, is made or 165 percent of the federal poverty level when the redetermination is made; and:

a. Is participating in the Kentucky Works Program described in 921 KAR 2:370;

b. Has had K-TAP benefits discontinued due to employment;

c. Is employed for a minimum of twenty (20) hours per week; or

d. Is enrolled in an educational or training program consistent with an employment goal, and:

(i) Is employed for a minimum of twenty (20) hours per week; or

(ii) Meets the requirements of subsection (3) of this section; or

4. Is placed with a relative caretaker pursuant to the conditions of KRS 605.120(5) whose family's income does not exceed:

a. 150 percent of the federal poverty level when the initial application is made; and

b. 165 percent of the federal poverty level when the redetermination

(2) A child who resides in a two (2) parent household shall be eligible for participation in the CCAP if the family meets the requirements of subsection (1)(a), (b), and (c)3 of this section and:

(a) Both parents meet the requirements of subsections (1)(c)2 or (3) of this section; or

(b) One (1) parent meets one (1) or more of the requirements of subsections (1)(c)1 and 3, and (3) of this section and the other parent:

1. Is physically or mentally unable to provide adequate care or supervision as demonstrated by written proof from a qualified professional attesting to the parent's inability, or

2. Meets the requirements of subsection (1)(c)2a or b of this section.

(3) A child who resides with a parent shall be eligible if the parent participates:

(a) As an unpaid student in a minimum of twenty (20) hours per week of:

1. Student teaching;

2. Internship; or

3. Practicum; or

(b) In a combination of paid employment and unpaid student capacity described in paragraph (a) of this subsection equal to twenty (20) hours per week.

(4) To the extent that state and federal funds are available, financial eligibility for participation in the CCAP may be increased beyond 150 percent of the federal poverty level for initial application and 165 percent of the federal poverty level for redetermination.

(5) A family shall not be eligible for a CCAP benefit if care is provided by:

(a) A parent or stepparent;

(b) A legal guardian;

(c) a member of the K-TAP or food stamp assistance case in which the child in need of services is included;

(d) A person living in the same home as the child in need of care;

(e) A provider not:

1. Licensed according to 922 KAR 2:090, Child care center licensure;

2. Certified according to 922 KAR 2:100, Certification of family child care homes; or

3. Registered according to 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program;

(f) An alternative program such as Head Start, state preschool or state kindergarten; or

(g) Another child care provider if the family operates a child care business in the home.

(6) If the family's income remains less than 165% of the federal poverty level, the family who has transitioned from K-TAP may continue participation in the program.

(7) Prior to the determination of technical eligibility, a parent of the child shall sign the DCC-90A or DCC-90B, "Application for Subsidized Child Care Assistance".

(8) If the restrictions specified in subsection (5) of this section do not apply to the related provider, the related provider may be eligible for payment from the Child Care Assistance Program.

Section 3. Parental Rights and Responsibilities. (1) The family of a child served by the CCAP shall:

(a) Have rights pursuant to KRS 199.898(1) and (2); and

(b) Be responsible for a copay in accordance with the family fee scale in Section 4(5) of this administrative regulation, if the child care copay has not been waived under a child protective services authorization or preventive services authorization.

(2) If a court orders a parent of a CCAP eligible child to pay a portion of the child's day care expenses, that payment shall be in lieu of the parental copayment required by Section 4(5) of this administrative regulation.

(3) Unless an alternative program such as Head Start, state preschool or state kindergarten is available and accessible during the time child care is needed, a parent of a child who receives or has been approved to receive CCAP benefits shall be offered a:

(a) Child care service subject to the availability of state and federal funds; and

(b) Choice

1. Pursuant to the option offered in 45 C.F.R. 98.30(a)(1); or

2. To receive a child care certificate, DCC-94A or DCC-94B, Child Care Service Agreement and Certificate, that shall be:

a. Issued to the parent; and

b. Of value commensurate with the subsidy value of a child care service provided in subparagraph 1 of this paragraph.

(4) The DCC-94A or DCC-94B shall:

(a) Be used for a child care service provided by a licensed, certified, or registered provider, or agency; and

(b) Not be considered a contract or grant to the child care provider, but shall be considered assistance to the parent pursuant to 45 C.F.R. 98.30(c)(6).

(5) a parent may change his provider a maximum of three (3) times in a twelve (12) month period, unless an exception is authorized by the cabinet or its designee due to.

(a) A natural disaster;

(b) Closure of a provider;

(c) Familial circumstances, such as relocation, illness, or death, or

(d) A risk to the health, welfare, or safety of the child or parent.

(6)(a) Unless there is an exception pursuant to KRS 214.036, a parent shall present to the cabinet or its designee a current immunization certificate showing that the child is immunized in order to receive a child care service under the CCAP.

(b) If a child served by the CCAP is not immunized, child care assistance benefits shall be available or continue for a period of thirty (30) days while the family takes necessary action to comply with the immunization requirement.

Section 4. State and Provider Requirements. (1) The cabinet or its designee shall provide consumer information regarding:

(a) The range of provider options pursuant to 45 C.F.R. 98.30,

(b) Parental rights pursuant to KRS 199.898(2);

(c) The K-TAP exception in which K-TAP benefits may not be reduced or terminated pursuant to 921 KAR 2:370 for a single custodial parent who refuses to work if the parent demonstrates an inability to obtain child care services for a child under age six (6); and

(d) Conditions for termination of the DCC-94A or DCC-94B, pursuant to KRS 199.8994(6)(b).

(2) The cabinet shall assure that a provider of a child care service funded under the CCDF and other local, state, or federal funds shall comply with the applicable regulatory requirements pursuant to:

(a) 922 KAR 2:090, Child care center licensure;

(b) 922 KAR 2:100, Certification of family child care homes;

(c) 922 KAR 2:110, Child care facility provider requirements;

(d) 922 KAR 2:120, Child care facility health and safety standards, and

(e) 922 KAR 2:180, Requirements for registered child care providers in the Child Care Assistance Program.

(3) The cabinet has established the maximum child day care payment as follows:

(a) The following charts represent the local maximum payment rate on a per day basis. The local maximum payment rate charts include the following categories:

1. Full day;
2. Part day;
3. Urban;
4. Nonurban;
5. Licensed;
6. Certified;
7. Registered;
8. Infant/Toddler;
9. Preschool, and
10. School age.

(b) Except in Bullitt, Carter, Gallatin, Grant, Oldham, Pendleton, Scott, and Woodford counties, the following child care maximum payment rates shall be effective the first day of the month following the adoption of this administrative regulation.

KENTUCKY CHILD CARE MAXIMUM PAYMENT RATES

EAST REGION

	Licensed				Certified				Registered			
	Full Day		Part Day		Full Day		Part Day		Full Day		Part Day	
	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban
Infant/Toddler	19	18	14	13	17	17	14	13	10	10	6	6
Preschool	16	15	11	11	15	16	11	11	10	10	6	6
School Age	16	15	11	11	15	16	9	9	10	10	6	6

WEST REGION

	Licensed				Certified				Registered			
	Full Day		Part Day		Full Day		Part Day		Full Day		Part Day	
	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban
Infant/Toddler	19	18	14	13	17	16	13	12	10	10	6	6
Preschool	18	16	15	14	16	15	12	12	10	10	6	6
School Age	16.75	16	15	14	16	15	13	12	10	10	6	6

CENTRAL REGION

	Licensed				Certified				Registered			
	Full Day		Part Day		Full Day		Part Day		Full Day		Part Day	
	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban	Urban	Nonurban
Infant/Toddler	24	20	18	14	21	18	17	14	13	13	8	8
Preschool	21	17	15	10	19	17	15	10	12	12	7	7
School Age	20	16	13	9	18	16.75	13	10	11	11	6	6

(c) The following child care maximum payment rates shall be effective for Carter county the first day of the month following the adoption of this administrative regulation.

	Licensed		Certified		Registered	
	Full Day	Part Day	Full Day	Part Day	Full Day	Part Day
Infant/Toddler	19	14	17	14	10	6
Preschool	15	11	15	11	10	6
School Age	15	11	15	9	10	6

(d) The following child care maximum payment rates shall be effective for Bullitt, Gallatin, Grant, Oldham, Pendleton, Scott, and Woodford county the first day of the month following the adoption of this administrative regulation.

	Licensed		Certified		Registered	
	Full Day	Part Day	Full Day	Part Day	Full Day	Part Day
Infant/Toddler	23	18	20	17	13	8
Preschool	20	15	18	15	12	7
School Age	19	13	17	13	11	6*

(4) If the same amount is charged to the general public:

(a) A licensed or certified provider may receive, to the extent funds are available.

1. Two (2) dollars per day beyond the maximum rate if the provider is accredited by the:

a. National Association for the Education for Young Children;

b. National Early Childhood Program Accreditation;

c. National Association for Family Child Care;

d. National School Aged Child Care Alliance; or

e. Other accrediting body approved by the Early Childhood Development Authority or the cabinet;

2. One (1) dollar per day beyond the maximum rate for nontraditional hour care for each child receiving services between:

a. 6 p.m. to 6 a.m.; or

b. Friday, 6 p.m. through Monday, 6 a.m.; and

(b) A licensed, certified, or registered provider may receive, to the extent funds are available, a special care rate of one (1) additional dollar per day beyond the maximum rate for care of a child:

1. With a special need; or

2. Who is between age thirteen (13) and nineteen (19) and is:

a. Physically and mentally incapable of caring for himself, or

b. Under court supervision.

(5)(a) The cabinet or its designee shall determine a copay that the family shall pay to the provider for the cost of child day care, based on the following sliding scale:

Family Fee Scale
(Family Co-Pay Per Day)

Income Range Monthly		Family Size 2 Family Co-Pay With 1 Child	Family Size 3 Family Co-Pay		Family Size 4 Family Co-Pay		Family Size 5 or More Family Co-Pay	
			With 1 Child	With 2 or more	With 1 Child	With 2 or more	With 1 Child	With 2 or more
0	899	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00	$0.00
900	999	$2.50	$2.50	$3.00	$2.50	$2.75	$2.25	$2.75
1,000	1,099	$3.25	$3.25	$3.75	$2.75	$3.25	$2.50	$3.00
1,100	1,199	$4.00	$4.00	$4.50	$3.25	$3.75	$2.75	$3.25
1,200	1,299	$4.50	$4.50	$5.00	$4.00	$4.50	$3.00	$3.50
1,300	1,399	$5.00	$5.00	$5.50	$5.00	$5.50	$3.50	$4.25
1,400	1,499	$6.50	$5.50	$6.25	$5.50	$6.25	$4.25	$4.75
1,500	1,599	$7.50	$6.00	$6.75	$6.00	$6.75	$5.00	$5.75
1,600	1,699	$8.50	$6.50	$7.50	$6.50	$7.50	$6.00	$6.75
1,700	1,799	$9.50	$7.00	$8.00	$7.00	$8.00	$6.75	$7.50
1,800	1,899	$10.00	$8.50	$9.50	$7.50	$8.50	$7.50	$8.50
1,900	1,999	$10.50	$9.50	$10.50	$8.00	$9.00	$8.00	$9.00
2,000	2,099	$11.00	$10.50	$11.50	$8.50	$9.50	$8.50	$9.50
2,100	2,199	$12.00	$10.50	$11.50	$9.00	$10.00	$9.00	$10.00
2,200	2,299	$12.00	$11.50	$12.50	$10.50	$11.50	$9.50	$10.50
2,300	2,399		$12.50	$13.50	$11.25	$12.25	$9.75	$10.75
2,400	2,499		$12.50	$13.50	$12.25	$13.25	$10.25	$11.25
2,500	2,599		$13.50	$14.50	$12.25	$13.25	$10.75	$11.75
2,600	2,699		$13.50	$14.50	$13.25	$14.50	$12.25	$13.25
2,700	2,799				$13.25	$14.50	$13.25	$14.25
2,800	2,899				$14.25	$15.50	$14.25	$15.75
2,900	2,999				$14.25	$15.50	$16.25	$17.25
3,000	3,099				$15.25	$16.50	$18.25	$19.25
3,100	3,199				$15.25	$16.50	$20.25	$21.25
3,200	3,299						$20.25	$21.25
3,300	3,399						$22.25	$23.25
3,400	3,499						$22.25	$23.25
3,500	3,599						$24.25	$25.25
3,600	3,699						$25.25	$25.25

(b) The family fee scale shall be effective the first day of the month following the adoption of this administrative regulation.

(6) The cabinet or its designee shall determine the maximum daily reimbursement rate and parent copay, not to exceed rates specified in subsections (3) through (5) of this section.

(7) The parent of a child served by the CCAP, per the DCC-94A or DCC-94B, shall advise the cabinet or its designee of a change in family size, address, or income within ten (10) days.

(8) Unless a family's child care copay has been waived, the cabinet or its designee shall include the income of each adult family member in the household when calculating a family's gross monthly income with the following exceptions:

(a) A child's:

1. Wages; or

2. Other income;

(b) Food stamps;

(c) A one (1) time lump payment;

(d) Supplemental Security Income or Social Security received in the child's name;

(e) Daily per diem received as a foster parent;

(f) A court award;

(g) A monetary gift;

(h) Military education benefits;

(i) K-TAP benefits received on behalf of the child only; and

(j) An employer only contribution listed on a pay check stub.

(9) Continued eligibility under the CCAP shall be redetermined:

(a) Every twelve (12) months; or

(b) Upon receipt of a reported change.

(10) The cabinet shall prioritize child care assistance benefits as determined by the available funds as follows:

(a) Child protective services or preventive services authorization;

(b) A child with a special need;

(c) A teen parent;

(d) A K-TAP recipient attempting through employment to transition off assistance;

(e) A parent whose K-TAP case has been discontinued during the previous twelve (12) months and who needs child care assistance in order to accept or retain employment;

(f) A low income working parent; and

(g) A parent in education or training.

(11) If CCAP services are reduced or terminated due to the shortage of funding, the cabinet shall provide a minimum thirty (30) day notice to each family receiving services.

(12) If the daily maximum payment rate is reduced due to the shortage of funding, the cabinet shall provide a minimum thirty (30) day notice to licensed, certified, or registered providers.

(13) A licensed or certified provider that serves a child who participates in the CCAP shall:

(a) Report more than five (5) absences per month to the cabi-

not or its designee; and

(b) Maintain and submit, upon request of the cabinet or its designee, a monthly sign-in sheet in which the arrival and departure time of each child has been recorded.

(14) Payment under the CCAP to a registered provider shall be based on the number of days reported on the DCC-97, Provider Billing Form that child care services are provided.

(15) Upon the effective date of this administrative regulation, a child care center that receives subsidized child care payments, in accordance with this administrative regulation, for forty (40) or more full-time or part-time children shall:

(a) Have two (2) years to meet the requirements of a STARS for KIDS NOW center as specified in 922 KAR 2:170; and

(b) Despite any fluctuation in the number of subsidized children eligible for payments receiving care in the child care center, maintain a STARS for KIDS NOW center rating as specified in 922 KAR 2:170.

Section 5. Recoupment. (1) The cabinet shall recoup a CCAP overpayment in each of the following cases:

(a) Fraud pursuant to 45 C.F.R. 98.60(i)

(b) Overpayment on behalf of a parent to a child care provider due to provider error.

(2) An overpayment shall be recovered through a reduction in the amount payable to the provider.

(3) An underpayment and an overpayment may be offset against each other in adjusting an incorrect payment.

(4) If a family's child care assistance benefit is reduced or terminated, the cabinet or its designee shall provide the family with a minimum of ten (10) days notice of the change in benefits.

(5) The cabinet shall recover the amount of an improper payment pursuant to KRS 45.237-241, including assistance paid pending the outcome of a hearing, from the claimant-payee.

Section 6. Criteria for Suspension or Termination of Services Under the CCAP. (1) If a family does not comply with a required copay:

(a) The cabinet or its designee shall develop a payment plan with the family;

(b) The family shall not transfer to another provider until the family demonstrates compliance with the payment plan, unless approval is granted by the cabinet or its designee due to:

(a) A natural disaster;

(b) Closure of a provider;

(c) Familial circumstances, such as re-location, illness, or death; or

(d) A risk to the health, welfare, or safety of the child or parent; and

(c) CCAP benefits may be suspended during the period in which back payment is owed to the provider.

(2) The cabinet or its designee shall investigate each allegation of fraud or overpayment and establish a repayment agreement with a family for the purpose of recovering a CCAP overpayment.

(3) Benefits under the CCAP shall be:

(a) Suspended if a family defaults on up to two (2) payments under a repayment agreement, suspension to end upon compliance with the repayment agreement; or

(b) Terminated if a family:

1. Resides out of state;

2. No longer meets the age, income, or parental status requirements established in Section 2(1), (2) or (3) of this administrative regulation;

3. Fails to comply with the redetermination requirement established in Section 4(9) of this administrative regulation;

4. Fails to provide verification of income if a copay has not been waived;

5. Defaults on three (3) payments under a repayment agreement with the cabinet; or

6. Refuses to sign DCC-98 a, Repayment Agreement.

(4) If a family reapplies for CCAP benefits after termination from the program for noncompliance with a repayment agreement, as described in subsection (3)(b)5 of this section, the cabinet or its designee shall reapprove CCAP benefits upon payment of the three (3) overdue installments.

(5) If a family reapplies for CCAP benefits after termination from the program for refusal to sign a DCC-98, as described in subsection (3)(b)6 of this section, the cabinet or its designee shall reapprove CCAP benefits upon signing of the DCC-98, and payment of two (2) installments.

Section 7. Criteria for Nonpayment under the CCAP. (1) Payment under the CCAP shall:

(a) Not be made to a licensed provider for more than five (5) absences per child during a month if the provider fails to:

1. Request payment from the cabinet or its designee prior to submitting the DCC-97; and

2. Provide explanation for a child having more than five (5) absences;

(b) Not be made to a certified provider for more than five (5) absences per child during a month;

(c) Be denied in accordance with KRS 199.8994(6);

(d) Cease permanently if a provider:

1. Defaults on three (3) payments under a repayment agreement with the cabinet or its designee; or

2. Refuses to sign a DCC-98.

(e) Not be made after the date in which a family begins using a different provider;

(f) Not be made if a family no longer meets the technical eligibility requirements under the CCAP; or

(g) Not be made if the child care provider fails to comply with Section 4(15) of this administrative regulation.

(2) Subject to the availability of state or federal funds, the cabinet may suspend approval of initial application for benefits under the CCAP following the priorities established in Section 4(10) of this administrative regulation.

Section 8. Appeals. The cabinet or its designee shall inform a family that:

(1) Appeal of a denial, reduction, suspension, or termination of benefits shall be submitted in writing to the cabinet or its designee within thirty (30) days of the date of the negative action; and

(2) If a family appeals:

(a) A reduction of benefits, child care assistance benefits shall be available at the reduced level during the appeal; or

(b) Suspension or termination of benefits, child care assistance benefits shall not be available during the appeal.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-90A, Application for Subsidized Child Care Assistance", edition 09/06;

(b) "DCC-90B, Application for Subsidized Child Care Assistance", edition 09/06;

(c) "DCC-94A, Child Care Service Agreement and Certificate", edition 09/06;

(d) "DCC-9BA, Child Care Service Agreement and Certificate", edition 09/06;

(e) "DCC-97, Provider Billing Form", edition 09/06; and

(f) "DCC-98, Repayment Agreement", edition 09-06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]

MARK A. WASHINGTON, Commissioner
TOM EMBERTON JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 10, 2007
FILED WITH LRC: July 11, 2007 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be

canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, Phone: 502-564-7905, Fax: 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation enables the Cabinet to qualify for federal funds under the Child Care Development Fund (CCDF) and establishes procedures for the implementation of the Child Care Assistance Program to the extent that funding is available.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to qualify for federal funds under CCDF and for the proper administration of the Child Care Assistance Program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet, qualify for the receipt of federal funds, and cooperate with other state and federal agencies for proper administration of the Cabinet and its programs. KRS 199.892 enables the Cabinet to qualify to receive federal funds under provisions of the Federal Social Security Act and provide effective regulation of child care centers. KRS 199.8994 requires the Cabinet to administer all child care funds to the extent allowable under federal law or regulation and in a manner which is in the best interest of the clients to be served. This administrative regulation conforms to the authorized statutes by allowing the Cabinet to qualify for federal funds and establishes procedures for the implementation of the Child Care Assistance Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of all child day care funds in a manner which is consistent with federal requirements and the best interest of the clients to be served.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment to this administrative regulation proposes the following: restructure family co-payments for child care services; clearly outline the application process for applicants of child care services; expand the list of income excluded from the determination of eligibility and co-payment assessment; limit CCAP payments to registered child care providers to no more than six children per day to assure health and safety of children in care; provide for advance notice of negative action to recipients; incorporate income calculation processes used to determine countable income; remove the requirement that child care centers receiving subsidized child care payments for forty or more children meet STARS for KIDS NOW center requirements; add the provision that child care enrollment fees may be paid on behalf of families receiving KTAP, provide for the payment of child care services to working families ineligible for CCAP due excess income; limit the payment for absent days to licensed child care centers to five days per month per child unless the absence is due to verified illness, death in the family, court order (child custody issues), disaster; revise materials incorporated by reference; correct formatting and citation errors to comply with KRS Chapter 13A; and make technical corrections.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to this administrative regulation in order to clarify the application process and definitions, provider and cabinet requirements. This amendment also amends parental co-payment requirements, complies with pending technological changes, and implements changes for the proper implementation of the Child Care Assistance Program.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring Kentucky's continued compliance with federal and state statutory requirements and provides for the proper administration of the child care funds through the establishment of procedures for child care assistance.

(d) How the amendment will assist in the effective administration of the statutes: This amendment assists in the effective administration of the statutes through its clarification of the application process, eligibility criteria, providers and cabinet requirements; and restructure of the co-payment requirements of parents. The amendment also implements changes to technological systems of the Cabinet and changes for the proper implementation of the Child Care Assistance Program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect a total of 41,000 children who receive child care services. It will also impact child care providers who serve children receiving CCAP benefits. There are currently 2285 licensed child care centers, 820 certified child care centers, and 4950 registered child care providers in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Parental co-payments will be restructured, and relief will be given to families whose household incomes are below 100% of the federal poverty guidelines or who are receiving protective or preventive services. In addition, income exclusions have been added, and the administrative regulation allows for other child care services to be supported, to the extent funding is available.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no increased cost to regulated entities because of this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment will clarify processes, decrease co-payments for those eligible, add income exclusion for program eligibility, and allow for the support of other child care services to the extent funding is available. The amendment also ensures Kentucky's continued eligibility for CCDF (federal block grant).

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: $10.1 million for State Fiscal Year 2008

(b) On a continuing basis: $12 9 million

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding to be used for implementation and enforcement of this amendment will be CCDF (federal block grant).

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increase in fees or funding will be necessary to implement this amendment. The fiscal impact of this administrative regulation will be absorbed by existing appropriations to the cabinet for CCDF.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment does not establish any fees directly or indirectly.

(9) TIERING: Is tiering applied? The Child Care Assistance Program will be implemented statewide; however, tiering is applied to distinguish urban from non-urban counties. Child care providers in urban counties receive a higher rate of child care assistance, due to the fact that those providers experience higher overhead costs. Those rate differentiations are further supported by the analysis of

the market rate survey results specified in KRS 199.899.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate 7 C.F.R. 1464.201, 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723, 38 U.S.C. 1815, 42 U.S.C 601-619, 1451, 1771, 1775, 2000d, 3001, 5001, 5011, 10601, 45 C.F.R. 98, 45 C.F.R. 400.66,

2. State compliance standards. KRS 194A.050, 199 892, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 7 C.F.R. 1464.201, 25 U.S.C. 459, 1261, 1401, 29 U.S.C. 723, 38 U.S.C. 1815, 42 U.S.C 601-619, 1451, 1771, 1775, 2000d, 3001, 5001, 5011, 10601, 45 C.F.R. 98, 45 C.F.R. 400.66

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.892, 199.8994, 42 U.S.C 601-619, 45 C.F.R. 98

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues.

(c) How much will it cost to administer this program for the first year? For State Fiscal Year 2008, this administrative regulation is projected to cost $10.1M. This cost will be covered by existing agency funds.

(d) How much will it cost to administer this program for subsequent years? For subsequent years, this administrative regulation is projected to cost $12.9M per year. This cost will be covered by existing agency funds.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Community Based Services
Division of Child Care
(Amendment)

922 KAR 2:180. Requirements for registered child care providers in the Child Care Assistance Program.

RELATES TO: KRS 17.165, 199.011(2), 199 898[~~(1), (2)~~], 199 8982, 199 8994, 314 011(5), 45 C.F.R. 98, [~~42 U.S.C.~~] 601-619, 9858

STATUTORY AUTHORITY: KRS 194A.050(1), 199.8994(6)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the Commonwealth. KRS 199 8994(6) requires the cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the cabinet, and criteria for the denial of subsidies if criminal records indicate convictions that impact the safety and security of children in care. This administrative regulation establishes the criteria for a child care provider to register in the Child Care Assistance Program.

Section 1. Definitions. (1) "Cabinet" is defined by KRS 199.011(2).

(2) "Closed" means the discontinuance of registration status without a penalty to the provider.

(3) "Denied" means the application for registration is not approved and the applicant incurs a penalty.

(4) "Health professional" means a person actively licensed in Kentucky as a:

(a) Physician;

(b) Physician's assistant;

(c) Advanced registered nurse practitioner; or

(d) Registered nurse as defined in KRS 314.011(5) under the supervision of a physician.

(5) "Revoked" means the discontinuance of registered provider status with a penalty.

(6) "Withdrawn" means the application is removed from consideration without a penalty.

[~~(3) "Infant" means a child who is less than twelve (12) months of age.~~

~~(4) "Related" means that a child care provider and a child under the provider's care have one (1) of the following familial or legal relationships:~~

~~(a) Parent and biological or adopted child;~~

~~(b) Stepparent and stepchild;~~

~~(c) Grandparent and grandchild;~~

~~(d) Great-grandparent and great-grandchild;~~

~~(e) Sibling;~~

~~(f) 1. Aunt or uncle; and~~

~~2. Niece or nephew; or~~

~~(g) Child custodian and child.~~]

Section 2. Application Rights and Requirements for Child Care Provider Registration. (1) An individual shall notify the cabinet or its designee of the individual's intent to apply for child care provider registration:

(a) Directly by:

1. Telephone; or

2. Written statement; or

(b) Indirectly by being designated as the choice for providing unregulated child care by an applicant for benefits under the Child Care Assistance Program (CCAP), as defined in 922 KAR 2:160, Section 1(6).

(2) An individual who intends to apply for registration as a child care provider shall have the right to apply or reapply for child care provider registration on the same day that the notice in accordance with subsection (1) of this section is made with the cabinet or its designee.

(3) An individual who intends and requests to apply for registration as a child care provider shall not be required to appear in person to complete an application and supporting documentation in accordance with subsections (4) and (5) of this section, but may receive all necessary forms and instructions by mail.

(4) To receive a decision regarding a request for child care provider registration in CCAP, an individual shall complete and file an application and documentation required in accordance with subsection (5) of this section with the cabinet or its designee within thirty (30) calendar days of the notice made pursuant to subsection

(1) of this section.

(5) The cabinet or its designee shall consider an individual as an applicant for child care provider registration if the individual

(a) Submits:

1.a. A DCC-95, Application for Registered Child Care Provider in Provider's Home; or

b. A DCC-96, Application for Registered Child Care Provider in Child's Home;

2. Written verification from a health professional that:

a. The individual is free of active tuberculosis; and

b. The individual is in good general health and able to care for children;

3. A DCC-94A, Registered Child Care Provider Information Form; and

4. An IRS W-9, the Request for Taxpayer Identification Number and Certification;

(b) Shows proof by photo identification or birth certificate that the individual is eighteen (18) years or older; and

(c) Meets the requirements of KRS 17.165(5), including:

1. A criminal records check conducted by the Kentucky State Police or Administrative Office of the Courts within the previous twelve (12) months on the individual;

2. A child abuse and neglect check in accordance with 922 KAR 1:470 on the individual; and

3. Provision of the criminal records and child abuse and neglect check results, conducted pursuant to subparagraphs 1 and 2 of this paragraph, to the cabinet or its designee.

(6) Within ninety (90) calendar days of the notice of intent to apply for registration as a child care provider in CCAP, in accordance with subsection (1) of this section, the applicant shall provide verification that the applicant has obtained three (3) hours of training approved by the cabinet or its designee, in the areas of:

(a) Infant and child first aid;

(b) Recognition of child abuse and neglect; and

(c) Health and safety standards.

Section 3. Additional Requirements for Registered Providers in Provider's Home. (1) If a registered child care provider provides child care services in the provider's home, the provider shall:

(a) Submit written verification from a health professional that each member of the provider's household age eighteen (18) or older is free from tuberculosis; and

(b) Provide written verification that each member of the provider's household who is age eighteen (18) or older has met requirements in KRS 17.165 by the member's submission to a:

1. Criminal records check conducted by the Kentucky State Police or Administrative Office of the Courts;

2. Child abuse and neglect check in accordance with 922 KAR 1:470; and

3. Provision of the criminal records and child abuse and neglect check results, conducted pursuant to subparagraphs 1 and 2 of this paragraph, to the cabinet or its designee.

(2) A registered child care provider shall certify that the provider's home and each play area used for child care are safe and have adequate:

(a) Heat;

(b) Light; and

(c) Ventilation.

(3) Each floor of the registered child care provider's home used for child care shall have at least one (1):

(a) Unblocked exit to the outside;

(b) Smoke detector;

(c) Fire extinguisher; and

(d) Carbon monoxide detector if the home:

1. Uses fuel burning appliances, or

2. Has an attached garage.

(4) The registered child care provider's home and areas accessible to children in care shall be free of hazards, and the following items shall be inaccessible to a child in care:

(a) Cleaning supplies, poisons, paints, insecticides;

(b) Knives, scissors, and other sharp objects;

(c) Power tools, lawn mowers, hand tools, nails, and other like equipment;

(d) Matches, cigarettes, lighters, combustibles, and flammable liquids;

(e) Alcoholic beverages; and

(f) Medications.

(5) Firearms and ammunition shall be stored and locked in separate locations inaccessible to a child in care.

(6) Electrical outlets not in use shall be covered.

(7) An electric fan, floor furnace, freestanding heater, wood burning stove, or fireplace, shall:

(a) Be out of the reach of a child; or

(b) Have a safety guard to protect a child from injury.

(8) The registered child care provider shall use protective gates to block all stairways if a child in care is under age three (3).

(9) Stairs and steps shall:

(a) Be in good repair; and

(b) Include railing of comparable length to the stairs or steps.

(10) A registered child care provider's home shall have:

(a) At least one (1) working telephone with a residential line or an active mobile service; and

(b) An accessible list of emergency telephone numbers, including the numbers for the:

1. Police;

2. Fire station;

3. Emergency medical care;

4. Poison control center; and

5. Reporting of child abuse and neglect.

(11) The registered child care provider's home shall have a:

(a) Refrigerator in working order that maintains a temperature of forty-five (45) degrees Fahrenheit or below; and

(b) Freezer that maintains a temperature of zero degrees Fahrenheit.

(12) The registered child care provider shall maintain first aid supplies that include:

(a) Liquid soap;

(b) Band aids;

(c) Sterile gauze, and

(d) Adhesive tape.

(13) The registered child care provider shall wash hands with liquid soap and running water:

(a) Before and after diapering a child;

(b) Before and after food preparation;

(c) Before feeding a child, and

(d) At other times when necessary to prevent the spread of disease.

(14) During operating hours, the use of corporal physical discipline shall be prohibited in accordance with KRS 199.896(18).

(15) Pets or livestock shall be vaccinated and not left alone with a child.

(16) If transportation is provided by the provider, the registered child care provider shall:

(a) Have written permission from a parent or guardian to transport the child;

(b) Have a vehicle equipped with seat belts;

(c) Individually seat-belt each child; and

(d) Transport pursuant to KRS 189.125(3) and (6).

Section 4. Actions on Applications. (1) The cabinet or its designee shall approve, deny, or withdraw an individual's application for registration within forty-five (45) calendar days from receipt of the individual's notice made in accordance with Section 2(1) of this administrative regulation.

(2) The cabinet or its designee may conditionally approve an individual who made a notice and application pursuant to Section 2(1) and (5) of this administrative regulation, to provide child care services to a child for ninety (90) calendar days, if the applicant meets the requirements of:

(a) Sections 2(4), (5) and 5 of this administrative regulation; and

(b) Section 3 of this administrative regulation, if child care is given in the home of the provider.

(3) The cabinet or its designee shall approve an individual who made a notice and application pursuant to Section 2(1) and (5) of this administrative regulation, as a registered child care provider for one (1) year, if the applicant meets the requirements specified in:

(a) Sections 2(4) through (6), and 5 of this administrative regu-

lation; and

(b) Section 3 of this administrative regulation if child care is given in the home of the provider.

(4) If a conditionally approved provider, as specified in subsection (2) of this section, has not completed the training requirement within the ninety (90) day timeframe pursuant to Section 2(6) of this administrative regulation, the cabinet or its designee shall not approve an applicant for payment pursuant to 922 KAR 2:160.

Section 5. General Requirements for Registered Child Care Providers. (1) A registered child care provider shall not:

(a) Live in the same residence as the child in care; or

(b) Hold a license or certification to provide child care in accordance with 922 KAR 2:090 or 2:100.

(2) A registered child care provider shall not provide other home based services, including such services as:

(a) A personal care home in accordance with 902 KAR 20:036;

(b) A family care home in accordance with 902 KAR 20:041;

(c) An adult day care in accordance with 910 KAR 1:160; or

(d) Supports for community living in accordance with 907 KAR 1:145.

(3) A registered child care provider shall:

(a) Comply with the:

1. Provisions of KRS 199.898 during operating hours; and

2. Provider requirements in accordance with 922 KAR 2:160, Section 13;

(b) Allow the cabinet, its designee, and parent access to the premises where a child receives care during the hours that the child care services are provided; and

(c) Report within ten (10) calendar days any change to the provider's:

1. Address;

2. Name;

3. Telephone number;

4. Household members; or

5. Location where the child care is provided.

(4) A registered child care provider who gives care in the provider's home shall comply with the requirements of Section 3(1) of this administrative regulation within ten (10) calendar days for a:

(a) New household member who is eighteen (18) years or older; or

(b) Household member who turns age eighteen (18).

(5)(a) A registered child care provider shall maintain a monthly sign-in sheet in which the daily arrival and departure times of each child are recorded.

(b) A registered child care provider shall retain monthly sign-in sheets completed in accordance with paragraph (a) of this subsection for five (5) years.

Section 6. Child Ratios. During hours of operation, a registered child care provider shall not care for more than:

(1) Three (3) children receiving CCAP per day;

(2) Six (6) children receiving CCAP per day, if those children are a part of a sibling group; and

(3) A total of eight (8) children inclusive of the provider's own children.

Section 7. Renewal of Registration. (1) The cabinet or its designee shall send a reminder notice to a registered child care provider at least forty-five (45) calendar days prior to the expiration date of the provider's registration issued in accordance with Section 4(3) of this administrative regulation.

(2) To renew child care provider registration prior to the expiration of the registration, a registered child care provider shall:

(a) Meet the requirements specified in Sections 2(5) and 5 of this administrative regulation; and

(b) Complete, and provide verification of, three (3) hours of training in early care and education approved by the cabinet or its designee, in one (1) or more of the following subjects:

1. Child growth and development;

2. Learning environments and nutrition;

3. Health, safety, and nutrition;

4. Family and community partnerships;

5. Child assessment;

6. Professional development and professionalism; or

7. Program management and evaluation.

(3) In addition to the requirements of subsection (2) of this section, a registered provider who gives care in the provider's home shall also meet the requirements of Section 3 of this administrative regulation.

Section 8. Negative Action for An Applicant or A Registered Child Care Provider. (1) The cabinet or its designee shall send written notice of negative action to:

(a) An applicant for registration, if the application is:

1. Withdrawn; or

2. Denied; or

(b) A registered child care provider, if the status is:

1. Closed, or

2. Revoked.

(2) The notice of negative action shall include the:

(a) Reason for the negative action; and

(b) Effective date.

(3) An applicant for registration or a registered child care provider shall be denied or revoked from providing services if:

(a) Written verification from a health professional confirms a diagnosis of tuberculosis;

(b) A background check required by KRS 17.165(5) reveals a:

1. Substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470; or

2. Conviction of a:

a. Violent crime; or

b. Sex crime;

(c) A history of behavior exists that may impact the safety or security of a child in care including:

1. A conviction related to the abuse or neglect of an adult;

2. A conviction for a drug-related felony; or

3. Other behavior or condition indicating inability to provide reliable care to a child;

(d) During operating hours, the provider uses or allows the use of any form of corporal physical discipline on a child, or

(e) There is an immediate threat to the health, safety, or welfare of a child in accordance with KRS 199.8994(6)(b).

(4) An applicant or registered child care provider who has been denied or revoked by the cabinet or its designee as the result of a negative action stemming from the requirements specified in 922 KAR 2:090, 2:100, 2:110, 2:120, or this administrative regulation, shall not be eligible to apply, operate, or reapply for registration with CCAP for a penalty period of one (1) year from the date of denial or revocation. After completion of the one (1) year penalty period from the date of prior denial or revocation, an individual may be approved if the individual:

(a) Complies with:

1. Sections 2 and 5 of this administrative regulation; and

2. If care is given in the home of the provider, Section 3 of this administrative regulation;

(b) Completes, and provides verification of, an additional twelve (12) hours of training approved by the cabinet or its designee in early care and education;

(c) Has not had an application, certificate, license, or registration to operate as a child care provider denied or revoked as specified in KRS 17.165; and

(d) Completes any disqualification period imposed from a previous denial or revocation of providing child care services.

(5) An application may be withdrawn:

(a) If all required documentation for the application process is not received within thirty (30) calendar days in accordance with Section 2(4) of this administrative regulation; or

(b) At the request of the applicant.

(6) A registered child care provider's status may be closed:

(a) At the request of the provider; or

(b) If the provider fails to comply with requirements in Section 3, 5, 6, or 7(2).

Section 9. Appeal of Negative Action. If the cabinet or its designee denies or withdraws registration to an applicant, or revokes or closes a registered child care provider's status, the applicant or provider may request an appeal in accordance with 922 KAR

1:320.

Section 10. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "DCC-94A, Registered Child Care Provider Information Form", edition 11/07;

(b) "DCC-95, Application for Registered Child Care Provider in Provider's Home", edition 11/07;

(c) "DCC-96, Application for Registered for Child Care Provider in Child's Home", edition 11/07; and

(d) "IRS W-9, Request for Taxpayer Identification Number and Certification", edition 11/05.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. [An applicant requesting registration as a child care provider shall:

(a) Not hold a license or certification to provide child care in accordance with 922 KAR 2:090 or 922 KAR 2:100; and

(b) Have at least one (1) working telephone with a residential line or active mobile service.

(2) To request registration as a child care provider, an applicant shall.

(a) Complete and submit to the cabinet or its designee, if requesting to care for a child in the

1. Child's home, the "DCC-96, Registration for Child Care Provider in Child's Home"; or

2. Applicant's home; the:

a. "DCC-95, Registration for Child Care Provider in Provider's Home"; and

b. "DCC-95A, Child Care Provider Self Assessment";

(b) Sign the "DCC-94, Child Care Service Agreement and Certificate", submitted by a parent to the cabinet or its designee, requesting the applicant provide services to a child for whom a benefit is paid under 922 KAR 2:160;

(c) Show proof that the applicant is eighteen (18) years old or older; and

(d) Meet the requirements of KRS 17.165(5), including:

1. A criminal records check conducted by the Kentucky State Police or Administrative Office of the Courts within the previous twelve (12) months for:

a. The applicant, and

b. Each member of the applicant's household who is age eighteen (18) or older; and

2. A child abuse and neglect check in accordance with 922 KAR 1:470 for:

a. The applicant; and

b. Each member of the applicant's household who is age eighteen (18) or older; and

3. Provision of the criminal records and child abuse and neglect check results, conducted pursuant to subparagraphs 1 and 2 of this paragraph, to the cabinet or its designee.

(3) Within thirty (30) days of the submission of documentation required in subsection (2) of this section, the applicant shall:

(a) Submit written verification that the applicant and each member of the applicant's household, who is age eighteen (18) or over, are free of active tuberculosis as specified in KRS 199.8982(1)(a)5, and

(b) Demonstrate the ability to care for a child by providing a written statement from a health professional attesting to the applicant's general health and medical ability to care for a child.

(4) Within ninety (90) days of the submission of documentation required in subsection (2) of this section, the applicant shall obtain three (3) hours of training approved by the cabinet or its designee, in the areas of:

(a) Infant and child first aid,

(b) Recognizing child abuse and neglect; and

(c) Health and safety standards.

Section 3. Approval of an Applicant as a Registered Child Care Provider.

(1) If requirements of Sections 2(1) through (3) and 4 of this administrative regulation are met, the cabinet or its designee may approve an applicant to provide child care services to a child for ninety (90) days.

(2) If all requirements specified in Sections 2 and 4 of this administrative regulation are met, the cabinet or its designee may approve an applicant as a registered child care provider for one (1) year.

Section 4. General Requirements for Registered Child Care Providers.

(1) A registered child care provider shall not provide other home based services, including such services as:

(a) A personal care home in accordance with 902 KAR 20:036;

(b) A family care home 902 KAR 20:041;

(c) An adult day care in accordance with 910 KAR 1:160; or

(d) Supports for community living in accordance with 907 KAR 1:145.

(2) A registered child care provider shall.

(a) Comply with the provisions of KRS 199.898;

(b) Allow the cabinet or its designee access to the premises where a child receives care during the hours that the child care services are provided; and

(c) Report within ten (10) days the following changes:

1. Address;

2. Name;

3. Telephone number;

4. Household members; or

5. Location where the child care is provided.

(3) A registered child care provider shall comply with the:

(a) Requirements of Section 2(2)(d) within ten (10) days for a:

1. New household member who is age eighteen (18) or older, or

2. Household member who turns age eighteen (18); and

(b) Child ratios established in Section 5 of this administrative regulation.

Section 5. Child Ratios. (1) With the exception of a sibling group, a child care provider shall not care for more than three (3) unrelated children.

(2) If a child care provider cares for related and unrelated children, the provider shall not care for more than:

(a) Three (3) children under the age of one (1) year, including the provider's related children; and

(b) Five (5) children under the age of six (6) years old including the provider's related children and no more than three (3) unrelated children.

(3) A child care provider may care for up to eight (8) children, including the provider's related children, and no more than three (3) unrelated children.

Section 6. Renewal of Registration. (1) A child care provider shall annually:

(1) Meet the requirements specified in Sections 2(1) through (3) and 4 of this administrative regulation; and

(2) Obtain three (3) hours of training in early care and education approved by the cabinet or its designee, in the following subjects:

(a) Child growth and development;

(b) Learning environments and nutrition;

(c) Health, safety, and nutrition;

(d) Family and community partnerships;

(e) Child assessment;

(f) Professional development and professionalism; or

(g) Program management and evaluation.

Section 7. Denial or Termination of Child Care Provider Registration. (1) The cabinet or its designee shall send written notice of denial or termination of registration to each applicant or registered provider. If registration is denied or terminated, the notice shall include the:

(a) Reason for the denial or termination, and

(b) Effective date of the denial or termination.

(2) An applicant for registration or a registered child care provider shall be denied or terminated from providing services if:

(a) The applicant during the:

1. Initial application process fails to comply with Sections 2

~~through 5 of this administrative regulation; or~~

~~2. Renewal application process fails to comply with Sections 2(1) through (3), and 4 through 6 of this administrative regulation;~~

~~(b) The provider fails to comply with Sections 4 and 5 of this administrative regulation;~~

~~(c) A background check required by KRS 17.165(5) reveals a~~

~~1. Cabinet substantiated incident of child abuse or neglect in accordance with 922 KAR 1:470, or~~

~~2. Conviction of a:~~

~~a. Violent crime; or~~

~~b. Sex crime;~~

~~(d) A history of behavior exists that may impact the safety or security of a child in care including:~~

~~1. A conviction related to the abuse or neglect of an adult;~~

~~2. A conviction for a drug-related felony; or~~

~~3. Other behavior or condition indicating inability to provide reliable care to a child;~~

~~(e) During operating hours, the provider uses or allows the use of any form of corporal physical discipline on a child in care including the provider's related child, or~~

~~(f) There is an immediate threat to the health, safety, or welfare of a child in accordance with KRS 199.8994(6)(b).~~

~~(3) The cabinet or its designee shall not approve an applicant for payment pursuant to 922 KAR 2:160 if the applicant has not completed the requirements set forth in Sections 2(1) through (3) and 4 of this administrative regulation.~~

~~(4) An applicant or child care provider that has been denied, revoked, or terminated by the cabinet or its designee as the result of a negative action of the requirements described in 922 KAR 2:090, 2:100, 2:110, 2:120, or this administrative regulation shall not be eligible to apply or reapply for registration with the Child Care Assistance Program for a period of one (1) year from the date of denial, revocation, or termination.~~

~~(5) After completion of a one (1) year period from the date of prior denial, revocation, or termination the applicant may be approved if the applicant:~~

~~(a) Complies with Sections 2(1) through (3) and 4 of this administrative regulation,~~

~~(b) Completes twelve (12) hours of training approved by the cabinet or its designee in early care and education;~~

~~(c) Has not had an application, certificate, license, or registration to operate as a child care provider denied, revoked, or terminated as specified in KRS 17.165, and~~

~~(d) Completes any disqualification periods imposed from a previous denial, revocation, or termination of providing child care services.~~

~~Section 8. Appeal of Denial, Revocation, or Termination. If the cabinet or its designee denies registration, revokes, or terminates an agreement to provide services with a child care provider pursuant to Section 7 of this administrative regulation, the provider may request an appeal in accordance with 922 KAR 1:320, Service appeals, Section 2(10).~~

~~Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:~~

~~(a) DCC-94, "Child Care Agreement and Certificate", edition 09/06;~~

~~(b) DCC-95, "Registration for Child Care Provider in Provider's Home", edition 09/06,~~

~~(c) DCC-95A, "Child Care Provider Self-Assessment", edition 09/06; and~~

~~(d) DCC-96, "Registration for Child Care Provider in Child's Home", edition 09/06.~~

~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department for Community Based Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.~~]

MARK A WASHINGTON, Commissioner
TOM EMBERTON JR., Deputy Secretary
MARK D. BIRDWHISTELL, Secretary
APPROVED BY AGENCY: July 10, 2007
FILED WITH LRC. July 11, 2007 at 11 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone 502-564-7905, fax 502-564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: David Gayle

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the criteria for a child care provider to register in the Child Care Assistance Program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to allow proper administration of all child care funds in a manner consistent with the best interests of families and children to be served and state and federal requirements, such as background checks and health screenings for providers and parental choice for providers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 194A.050(1) requires the Secretary of the Cabinet for Health and Family Services to promulgate administrative regulations necessary under applicable state laws to protect, develop and maintain the health, personal dignity, integrity and sufficiency of the individual citizens of the Commonwealth. KRS 199.8994(6) requires the Cabinet to promulgate administrative regulations to establish minimum health and safety standards, limitations on the maximum number of children in care, training requirements for a child care provider that receives a child care subsidy administered by the Cabinet and criteria for denial of subsidies. This administrative regulation establishes the criteria for a child care provider to register in the Child Care Assistance Program.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the administration of all child day care funds in a manner which is consistent with the best interests of families and children to be served and state and federal requirements, such as background checks and health and safety screenings for providers of parental choice.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will clarify the application process to be a registered child care provider; incorporate safe home environment requirements for those registered providers caring for children in their home; clarify language relating to the number of children who may be cared for by a registered provider; and clarify those negative actions which incur a penalty.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to clarify the application process to become a registered provider and revise all related forms used in this process. Minimum safe home environment requirements have been incorporated into the administrative regulation, though they have existed previously in practice. These minimum environmental requirements are needed to assure the safety of children in care. Limitations on the number of children, who may be cared for a provider at one time, are needed to protect the

health and safety of children in care.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by ensuring Kentucky's continued compliance with federal and state statutory requirements and provides for the proper administration of the child care funds through the establishment of procedures for child care assistance.

(d) How the amendment will assist in the effective administration of the statutes. The amendment to this administrative regulation will assist in the administration of all child care funds in a manner which is consistent with federal and state requirements and the best interests of the client to be served.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect a total of 1,848 registered providers who care for 1,503 children.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Registered child care providers will certify that the location of child care services meets minimum health and safety standards. Otherwise, no new action is required on the part of providers.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to regulated entities for complying with this amendment.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of this amendment, the application process and all requirements to become a registered provider will be more clearly stated to the public. Negative actions that incur a penalty to the provider will be clearly stated to the public and known by registered providers. Parents who choose care provided by registered providers will be assured the registered provider has certified that their home meets basic health and safety requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional cost to implement this amendment.

(b) On a continuing basis: There will be no cost to implement this amendment.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Child Care and Development Funds (Federal Block Grant) support this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: There will be no increase in fees or funding needed for the implementation of this regulatory amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment will not establish any new fees directly or indirectly.

(9) TIERING: Is tiering applied? Tiering is not applied, because policy is applied in a like manner for all registered child care providers across the state.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 42 U.S.C. 9858

2. State compliance standards KRS 194A.050, 199.8994

3. Minimum or uniform standards contained in the federal mandate. 45 C.F.R. 98, 42 U.S.C. 601-619, 42 U.S.C. 9858

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Community Based Services will be impacted by this administrative regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.050, 199.8994, 45 C.F.R. 98, 42 U.S.C. 601-619, 9858

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate no new revenues in its first year of implementation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate no new revenues in subsequent years of its implementation.

(c) How much will it cost to administer this program for the first year? There are no new costs associated with this administrative regulation.

(d) How much will it cost to administer this program for subsequent years? There are no new costs associated with this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

GENERAL GOVERNMENT CABINET
Department of Military Affairs
Military Family Assistance Trust Fund Board
(New Administrative Regulation)

106 KAR 2:020. Military Family Assistance Trust Fund.

RELATES TO: KRS 36.470, 36.474, 36 476
STATUTORY AUTHORITY: KRS 36.474(3), (5)
NECESSITY, FUNCTION AND CONFORMITY: KRS 36.470 establishes the military family assistance trust fund. KRS 36.474(3), (5) require the board to promulgate an administrative regulation establishing the maximum amount of grant assistance a person may receive in a twelve (12) month period and to establish a need-based application for trust fund grants. This administrative regulation establishes the application process and the maximum amount of grant assistance as required by KRS 36.475.

Section 1. Military Family Assistance Trust Fund Board. The board shall receive a report on all funds expended on applications and shall be informed on the reason for any application being disapproved.

Section 2. Application for Trust Funds. Any qualified service member, Kentucky resident spouse, or legal dependent may submit a "Military Family Assistance Trust Fund Application, DMA Form 43-1" for application of grant funds for a need-based emergency.

Section 3. Payment of Grants. (1) A maximum of $2,500 may be approved for a single application as identified on DMA Form 43-1. A maximum of $5,000 per fiscal year per service member or family of a service member may be approved.

(2) Amounts greater than the $2,500 single application cap and $5,000 fiscal year maximum cap may be approved by a majority vote of the board members. In the case of a catastrophic event or in the case of at least a twenty-five (25) percent loss of annual income, the Board may approve an amount greater than the cap amounts.

(3) Internal control measures shall be used prior to awarding a grant, including obtaining necessary proof verifying the requested need.

Section 4. Incorporation by Reference. (1) "Military Family Assistance Trust Fund Application, DMA Form 43-1", 1 May 2007, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Administrative Services Division, Office of Management and Administration, Department of Military Affairs, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168, or by calling the Office at (502) 607-1156 or (502) 607-1738, Monday through Friday, 8 a.m. to 4:30 p.m.

COL JUDY GREENE-BAKER, President
APPROVED BY AGENCY: June 20, 2007
FILED WITH LRC: June 25, 2007 at 4 p.m.
PUBLIC HEARING AND PUBLIC COMMENT PERIOD A public hearing on this administrative regulation shall be held on August 22, 2007 at 2 p.m. at 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168 at the Emergency Operations Center in Room 202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Steven E. Engels, Policy Analyst III, Administrative Services Division, Office of Management and Administration, Department of Military Affairs, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601-6168, phone (502) 607-1156, fax (502) 607-1394. Alternate contact is Mr. Steven P. Bullard, Director of Administrative Services, Office of Management and Administration, Department of Military Affairs, phone (502) 607-1738, fax (502) 607-1240.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Mr. Steven E. Engels, Policy Analyst III

(1) Provide a brief summary of:

(a) What this administrative regulation does: This regulation establishes guidance for the establishment of the Military Family Assistance Trust Fund and its governing Board. It provides eligibility and basic criteria for applying for and granting funds to approved applicants. It additionally provides guidance for required reports that are to be submitted.

(b) The necessity of this administrative regulation: This regulation is critical to provide guidance in the execution of this program pursuant to the basic law.

(c) How this administrative regulation conforms to the content of the authorizing statutes. This regulation establishes how the board members will be appointed, the term limits of the board, and the internal workings and timeliness of board meetings and required actions. It additionally provides guidance on the eligibility and grant caps for recipients.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will assist the Military Family Assistance Trust Fund Board and the Adjutant General in the execution of this program for approving applications, as well as providing guidance on reporting procedures.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: This is a new regulation being established.

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation is written to provide guidance in assisting spouses and dependents of service members who are deployed to provide emergency funds to alleviate undue financial hardships as a direct result of mobilization of the service member. This trust fund is to be used as a last resort when all other reasonable steps have been utilized for assistance.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation: No action is required of any entity.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost for any entity.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). This regulation will allow for the establishment of guidance on how to execute this trust fund in assisting the service member and his/her family in the resolution of any undue hardship generated as a result of mobilization.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Initially this program will cost an estimated $500,000 annually to establish and provide grants to applicants. This program was funded $500,000 in each year of the current biennium per HB 380 2006 RS (Ky Acts ch. 252) as an additional funding increase for the Department of Military Affairs.

(b) On a continuing basis: It is estimated that $500,000 will be needed on an annual basis to meet the needs as established by this regulation. Per HB 380 2006 RS (Ky Acts 252), this continued funding is now a part of the baseline budget for the Department of Military Affairs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of this trust fund is general fund dollars as well as any grants, contributions, appropriations, or other moneys made available for the purpose of the trust fund either public or private.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: There is no anticipated increase of funds at this time. This is a new program being established with no historical record of requirements.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish or relate to fees.

(9) TIERING: Is tiering applied? Tiering was not used. The regulations will not reduce or modify substantive regulatory requirements, eliminate some requirements entirely, simplify and reduce reporting and recordkeeping requirements, reduce the frequency of inspections, provide exemptions from inspections and other compliance activities, or delay compliance timetables.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Military Affairs, Division of Administrative Services.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 36.470 to 36.476.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None

(c) How much will it cost to administer this program for the first year? Initially this program will cost an estimated $500,000 to establish and provide grants to applicants. HB 380 2006 RS (Ky Acts ch. 252) earmarked $100,000 of the $500,000 total program funding specifically for the administration of this program. The remaining $400,000 is for programmatic grants to eligible applicants.

(d) How much will it cost to administer this program for subsequent years? It is estimated that $500,000 will be needed on an annual basis to meet the needs as established by this regulation Per HB 380 2006 RS (Ky Acts ch. 252), this continued funding is now a part of the baseline budget for the Department of Military Affairs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): This definitional administrative regulation has no fiscal impact.

Expenditures (+/-): This definitional administrative regulation has no fiscal impact.

Other Explanation: This definitional administrative regulation has no fiscal impact.

GENERAL GOVERNMENT CABINET
Board of Nursing
(Repealer)

201 KAR 20:251. Repeal of 201 KAR 20:250, 201 KAR 20:300, and 201 KAR 20:330.

RELATES TO: KRS 314.111

STATUTORY AUTHORITY: KRS 314.131(1)

NECESSITY, FUNCTION, AND CONFORMITY: 201 KAR 20:250 is being repealed because its provisions are being added to other administrative regulations as needed. 201 KAR 20:300 is being repealed because the board will no longer recognize experimental programs of nursing. 201 KAR 20:330 is being repealed because its provisions are being added to 201 KAR 20:320.

Section 1. The following administrative regulations are hereby repealed:

(1) 201 KAR 20:250, Definitions for registered and practical nurse prelicensure programs of nursing;

(2) 201 KAR 20:300, Standards for prelicensure experimental programs of nursing; and

(3) 201 KAR 20:330, Standards for curriculum for prelicensure practical nurse programs.

SUSAN DAVIS, President

APPROVED BY AGENCY: June 14, 2007

FILED WITH LRC: July 10, 2007 at 10 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2007, at 1 p.m. (EST) in the office of the Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 15, 2007, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until close of business August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Nathan Goldman, General Counsel, Kentucky Board of Nursing, 312 Whittington Parkway, Suite 300, Louisville, Kentucky 40222, phone (502) 429-3309, fax (502) 696-3938, email nathan.goldman@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Nathan Goldman, General Counsel

(1) Provide a brief summary of:

(a) What this administrative regulation does: It repeals three Board of Nursing administrative regulations.

(b) The necessity of this administrative regulation: The three administrative regulations are being repealed since two (201 KAR 20:250 and 20:330) are being incorporated into other administrative regulations of the board and the third (201 KAR 20:300) is no longer needed.

(c) How this administrative regulation conforms to the content of the authorizing statutes: By repealing unneeded administrative regulations.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: By repealing unneeded administrative regulations.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of.

(a) How the amendment will change this existing administrative regulation:

(b) The necessity of the amendment to this administrative regulation:

(c) How the amendment conforms to the content of the authorizing statutes:

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Prelicensure programs of nursing. Currently, there are 44 RN programs and 22 LPN programs.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The regulated entities need not take any actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Not applicable.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional cost.

(b) On a continuing basis: No additional cost.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase will be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: It sets two new fees: a fee for failure to meet the plan of compliance and a fee for failure to file a plan of compliance.

(9) TIERING: Is tiering applied? Tiering was not applied as the changes apply to all equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

DEPARTMENT OF AGRICULTURE
Livestock Sanitation
(New Administrative Regulation)

302 KAR 20:261. Approved Kentucky Horse Sale.

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.020, 257.030

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.020 requires the Board of Agriculture to prevent, control, and eradicate any communicable disease of animals. KRS 257.030(4) authorizes the board to promulgate administrative regulations necessary to administer any provision of KRS Chapter 257. This administrative regulation establishes sanitary requirements and operational procedures for approved horse sales relative to disease control.

Section 1. Definition. (1) "Approved Kentucky horse sale" means a regularly scheduled public equine sale that does not require certification of EIA testing and pre-consignment and that meets the requirements of 302 KAR: 20 260.

Section 2. Operating Sale Requirements. (1) The Application for an Approved Horse Sale and the application for equine market veterinarian shall both be approved by the Office of State Veterinarian, OSV, prior to the first sale day.

(2) The sale management shall meet the following requirements pertaining to the sale and the premises at which the sale is conducted.

(a) Furnish a schedule of sale days to the OSV;

(b) Maintain well constructed pens and handling facilities that are clean, well lighted and in good repair for equines;

(c) Maintain a cleaning and disinfection program that is approved by the OSV;

(d) Take full responsibility to insure that all horses and other equidae on the premises without valid negative EIA test certificates shall have a blood sample drawn for EIA testing by the approved market veterinarian at the owner's expense prior to the sale;

(e) Insure that all horses be identified by a back tag or other official ID tag. The horse's color, sex, breed, age, and back tag number shall be recorded by sales staff.

(f) Maintain on file for twelve (12) months complete records of the origin and destination of each animal going through the sale. These records shall be made available to the department upon request.

1. Records shall include identification of each equine sold that meets the requirements in paragraph (e) of this subsection.

2. Records shall provide the premises of origin address for the equine, the name and address for the seller and the name and address for the buyer. A driver's license or other valid identification shall be used to verify complete address of both the buyer and seller of each animal.

(g) Post notices announcing that animals are being sold without proof of negative testing for Equine Infectious Anemia in visible locations throughout the market and sale area.

(3) Sales management shall arrange for a licensed and accredited veterinarian, approved by the OSV as the equine market veterinarian, to implement the provisions in Section 3 of this administrative regulation.

Section 3. Veterinary Duties The equine market veterinarian shall:

(1) Visually inspect all equine animals for clinical evidence of communicable diseases and report the presence of any communicable disease condition to the State Veterinarian or an authorized representative;

(2) Provide direct supervision for the collection of required blood samples from all eligible animals and for the recording of corresponding identification of each sample on the form designated by OSV.

(3) Cooperate with state-federal inspectors and sales management in carrying out all applicable laws and regulations governing the sale and movement of equines.

Section 4. Incorporation by Reference. (1) The following mate-

nal is incorporated by reference:

(a) "Application For an Approved Horse Sale"; and

(b) "Responsibilities of the Equine Market Veterinarian".

RICHIE FARMER, COMMISSIONER

APPROVED BY AGENCY: July 10, 2007

FILED WITH LRC: July 10, 2007 at 3 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 29, 2007, at 10 Eastern Time, at the Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by August 23, 2007. Five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robert Stout or Sue Billings, Kentucky Department of Agriculture, Office of State Veterinarian, 100 Fair Oaks Lane, STE 252, Frankfort, Kentucky 40601, phone (502) 564-3956, fax (502) 564-7852.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Robert Stout or Sue Billings

(1) Provide a brief summary of.

(a) What this administrative regulation does: This regulation establishes sanitary requirements and operating procedures for approved horse sales.

(b) The necessity of this administrative regulation: This regulation is necessary to prevent introduction of an equine disease, to control equine diseases and to protect the equine industry of the state.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This regulation explains specific areas of livestock disease monitoring and animal disease control for which the statute gives authority.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides requirements for the operation of approved horse sales and the testing for Equine Infectious Anemia that is necessary to prevent the introduction of disease into the equine population.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will provide specific guidelines for approved horse sales and will serve KY's animal industries by improving preventive actions.

(b) The necessity of the amendment to this administrative regulation: The current information on approved horse sales is unclear as written. This regulation is necessary to prevent introduction of an animal disease.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 257.030 requires that regulation be promulgated to address specific areas of livestock disease monitoring and animal disease control.

(d) How the amendment will assist in the effective administration of the statutes: This amendment for control of a specific disease reflects current science-based information and best practice protocols to provide for safe and efficient operation of our animal industries.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Producers selling equine animals through the approximately 17 approved horse sale venues and the horse sale producers are affected by this regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Most of the requirements in this amendment are already in place, except for the requirement of a negative test result before the horse leaves the sale grounds. This revision may require a routine expenditure by the producer to provide negative test results before the sale. This revision may require sale venues to enhance their ability to provide testing on site.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be routine testing costs to producers and some infrastructure costs to marketing entities. These costs are indeterminable at this time.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The benefits will be to protect the state equine industry from serious animal disease setbacks that may completely curtail all animal movement and business.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No expense.

(b) On a continuing basis: No expense.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: General fund to KDA for personnel.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No new fees involved.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish any new fees, nor does it change previous fees.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? No

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

(c) How much will it cost to administer this program for the first year?

(d) How much will it cost to administer this program for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

EDUCATION CABINET
Department for Libraries and Archives
Public Records Division
(New Administrative Regulation)

725 KAR 1:060. Records retention schedules; authorized schedules.

RELATES TO: KRS 171.450.
STATUTORY AUTHORITY: KRS 171.450.
NECESSITY, FUNCTION, AND CONFORMITY: KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to enforce the provision of KRS 171.410 to 171.740 by promulgating administrative regulations. This administrative regulation identifies schedules of public records approved and authorized for use by state and local agencies.

Section 1. Kentucky state government agencies shall use the:
(1) General Schedule for State Agencies and the General Schedule for Electronic and Related Records if the schedules are appropriate; and
(2) The specific schedules identified in Section 22(1)(c) through (u) of this administrative regulation if they are appropriate.

Section 2. The Department of Agriculture shall use the approved Records Retention Schedules for the Department of Agriculture, together with approved general records retention schedules for state agencies, if appropriate.

Section 3. The Office of the Auditor of Public Accounts shall use the approved Records Retention Schedule for the Auditor of Public Accounts, together with approved general records retention schedules for state agencies, if appropriate.

Section 4. The Commerce Cabinet shall use the approved Records Retention Schedules for the Commerce Cabinet, together with approved general records retention schedules for state agencies, if appropriate.

Section 5. The Economic Development Cabinet shall use the approved records retention schedules for the Economic Development Cabinet, together with approved general records retention schedules for state agencies, if appropriate.

Section 6. The Education Cabinet shall use the approved records retention schedules for the Education Cabinet, together with approved general records retention schedules for state agencies, if appropriate.

Section 7. The Environmental and Public Protection Cabinet shall use the approved records retention schedules for the Environmental and Public Protection Cabinet, together with approved general records retention schedules for state agencies, if appropriate.

Section 8. The Finance and Administration Cabinet shall use the approved records retention schedules for the Finance and Administration Cabinet, together with approved general records retention schedules for state agencies, if appropriate.

Section 9. General Government agencies shall use the approved records retention schedules for the General Government agencies, together with approved general records retention schedules for state agencies, if appropriate

Section 10. The Office of the Governor shall use the approved Records Retention Schedules for the Office of the Governor, together with approved general records retention schedules for state agencies, if appropriate.

Section 11. The Cabinet for Health and Family Services shall use the approved records retention schedules for Cabinet for Health and Family Services, together with approved general records retention schedules for state agencies, if appropriate.

Section 12. The Justice and Public Safety Cabinet shall use the approved records retention schedules for the Justice and Public Safety Cabinet, together with approved general records retention schedules for state agencies, if appropriate.

Section 13. The Department of Law shall use the approved records retention schedules for the Department of Law, together with approved general records retention schedules for state agencies, if appropriate.

Section 14. Legislative Branch agencies shall use the approved Records Retention Schedules for the Legislative Branch, together with approved general records retention schedules for state agencies, if appropriate.

Section 15. The Office of the Lieutenant Governor shall use the approved Records Retention Schedule for the Lieutenant Governor, together with approved general records retention schedules for state agencies, if appropriate.

Section 16. The Personnel Cabinet shall use the approved records retention schedules for the Personnel Cabinet, together with approved general records retention schedules for state agencies, if appropriate.

Section 17. The Office of the Secretary of State shall use the approved Records Retention Schedules for the Secretary of State, together with approved general records retention schedules for state agencies, if appropriate.

Section 18. The Transportation Cabinet shall use the approved records retention schedules for the Transportation Cabinet, together with approved general records retention schedules for state agencies, if appropriate

Section 19. The Department of the Treasury shall use the approved Records Retention Schedule for the Office of the State Treasurer, together with approved general records retention schedules for state agencies, if appropriate.

Section 20. State Universities and the Kentucky Community and Technical College System shall use the approved State University Model Records Retention Schedule, if appropriate.

Section 21. Kentucky local government agencies shall use:
(1) The Local Government General Records Schedule and the General Schedule for Electronic and Related Records if the schedules are appropriate; and
(2) The specific schedules identified in Section 22(1)(u) through (ii) of this administrative regulation for their respective offices if they are appropriate.

Section 22. Incorporation by Reference. (1) The following material is incorporated by reference:
(a) "General Schedule for State Agencies", 2007;
(b) "General Schedule for Electronic and Related Records", 2007;
(c) "Department of Agriculture Schedule", 2007;
(d) "Auditor of Public Accounts Schedule", 2007;
(e) "Commerce Cabinet Schedule", 2007;
(f) "Economic Development Cabinet Schedule", 2007;
(g) "Education Cabinet Schedule", 2007;
(h) "Environmental and Public Protection Cabinet Schedule, "2007;
(i) "Finance and Administration Cabinet Schedule", 2007;
(j) "General Government Schedule", 2007;
(k) "Office of the Governor Schedule", 2007;
(l) "Cabinet for Health and Family Services Schedule", 2007;
(m) "Justice and Public Safety Cabinet Schedule", 2007;
(n) "Department of Law Schedule", 2007;
(o) "Legislative Branch Schedule", 2007;

(p) "Office of the Lieutenant Governor Schedule", 2007;
(q) "Personnel Cabinet Schedule", 2007;
(r) "Office of the Secretary of State Schedule" 2007;
(s) "Transportation Cabinet Schedule", 2007;
(t) "Department of the Treasury Schedule", 2007;
(u) "State University Model Schedule", 2007;
(v) "Local Government General Records", 2007;
(w) "Area Development District Schedule", 2007;
(x) "County Attorney Schedule", 2007;
(y) "County Clerk Schedule", 2007;
(z) "County Coroner Schedule", 2007;
(aa) "County Judge Executive Schedule", 2007;
(bb) "County Sheriff Schedule", 2007;
(cc) "County Treasurer Schedule", 2007;
(dd) "Jailer Schedule", 2007;
(ee) "Lexington Fayette Urban County Government Schedule", 2007;
(ff) "Library District Schedule", 2007;
(gg) "Local Health Department Schedule", 2007;
(hh) "Municipal Government Schedule", 2007: and
(ii) "Public School District (K-12/Central Office) Schedule", 2007

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at Public Records Division, Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4.30 p.m.

WAYNE ONKST, State Librarian and Commissioner
APPROVED BY AGENCY: July 12, 2007
FILED WITH LRC: July 13, 2007 at 11 a m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2007, at 9 a.m., at the Kentucky Department for Libraries and Archives, 300 Coffee Tree Road, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until August 31, 2007. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Richard N. Belding, P. O. Box 537, Frankfort, Kentucky 40602, phone (502) 564-8300, ext. 252, fax (502) 564-5773.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Richard Belding

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation identifies records retention schedules approved for use by public agencies.

(b) The necessity of this administrative regulation: KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal. KRS 171.450(2) requires the department to enforce the provision of KRS 171.410 to 171.740 by promulgating administrative regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 171.450(1)(a) and (b) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal and for the disposal or destruction of public records authorized for disposal or destruction. This regulation identifies those schedules.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will facilitate appropriate storage, preservation, accessibility, and disposal of public records. It does so by identifying records retention schedules that public agencies can use in meeting their responsibilities related to public records. These schedules have been approved by the State Archives and Records Commission.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of: N/A

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All state and local government agencies are affected by this regulation, as all have a responsibility under statute to preserve or dispose of records according to decisions of the State Archives and Records Commission.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: There will be no new responsibilities added under this regulation to those that already existing for state and local government agencies. Agencies will continue to schedule their records for retention and disposal, as they are doing currently.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no new costs added to those already existing for public agencies under this regulation, as records management is a regular part of agency business.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Agencies that comply with this regulation will improve efficiency and productivity, control the creation and growth of records, support better decision making, recognize cost savings from reduced records storage costs, manage risk more effectively, protect business continuity, and preserve corporate memory.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no costs for agencies to implement this regulation. This regulation merely identifies schedules utilized in activities that agencies are undertaking already.

(b) On a continuing basis: Same as (5)(a) above.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:
The activites identified in this regulation are already undertaken by public agencies and managed under their current appropriations; it is only being enacted to enumerate the various schedules agencies have at their disposal when managing public records.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No required increase is projected.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This regulation does not establish or increase, directly or indirectly, any fees.

(9) TIERING: Is tiering applied? Tiering is not applied because this regulation applies uniformly to all public agencies.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government

(including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? All state and local government agencies are required to utilize the documents enumerated in this regulation.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 171.450(1)(a) requires the department to establish procedures for the compilation and submission to the department of lists and schedules of public records proposed for disposal.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. There will be no net effect on agencies' expenditures and revenues.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There will be no additional revenues generated because of this regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There will be no additional revenues generated because of this regulation.

(c) How much will it cost to administer this program for the first year? There will be no additional costs generated because of this regulation.

(d) How much will it cost to administer this program for subsequent years? There will be no additional costs generated because of this regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): $0.00
Expenditures (+/-):$0 00
Other Explanation:

CABINET FOR HEALTH AND FAMILY SERVICES
Kentucky Department for Public Health
Division of Public Health Protection and Safety
(New Administrative Regulation)

902 KAR 45:075. Tanning facilities.

RELATES TO: Chapter 13B, 211.005, 211.015, 211.025, 211.180, 211.760, 211.992, 21 C.F.R.1040.20
STATUTORY AUTHORITY: KRS 217.920 -217.928
NECESSITY, FUNCTION, AND CONFORMITY: KRS 217.926 mandates the Cabinet for Health and Family Services to promulgate administrative regulations relating to the registration and monitoring of tanning facilities. This administrative regulation provides the standards for compliance of tanning facilities.

Section 1. Definitions. (1) "Consent" means to give assent or approval.

(2) "Guardian" is defined by KRS 387.010(3).

(3) "Minor" is defined by KRS 387.010(1).

(4) "Parent" is defined by KRS 387.010(7)

(5) "Protective eyewear" means any device designed to be worn by users of a product to reduce exposure of the eyes to radiation emitted by the product.

(6) "Registration" means the issuance of a document by the local health department to a tanning facility authorizing the person named in the document to engage in the business of operating a tanning facility.

(7) "Tanning device" is defined by KRS 217.920(2).

(8) "Tanning facility" is defined by KRS 217.920(3).

Section 2. Tanning Facilities Registration. (1) A tanning facility shall register with the local health department in the district or county in which the facility is operating before July 1, 2007.

(2) An application for registration shall be made using the form DFS-303, Application for Registration.

(3) A fee of twenty (20) dollars shall be paid to the district or county health department at the time of registration.

(4) Registration shall be valid for one (1) calendar year and shall expire on December 31st of each year.

Section 3. Consent. (1) A person under the age of fourteen (14) shall be accompanied by a parent or legal guardian when using a tanning device.

(2) Before any person who has reached his or her fourteenth birthday but has not passed his or her eighteenth birthday uses a tanning device, he or she shall give the tanning facility a statement, signed by his or her parent or legal guardian, stating that the parent or legal guardian:

(a) Has read and understood the warnings given by the tanning facility;

(b) Consents to the minor's use of the tanning device; and

(c) Agrees that the minor will use protective eyewear.

(3) Parental consent is valid for one (1) calendar year from date of signature.

Section 4. Facility Responsibilities. (1) A tanning facility shall give each customer a written statement pursuant to 21 C.F.R. 1040.20. This written statement shall include the following warnings:

(a) Failure to use eye protection may result in damage to the eye;

(b) Overexposure to ultraviolet light causes burns;

(c) Repeated exposure may result in premature aging of the skin
and skin cancer; and

(d) Abnormal skin sensitivity or burning may be caused by reactions of the following to ultraviolet light:

1. Food;
2. Cosmetics; or
3. Medications including, but not limited to:
a. Tranquilizers;
b. Diuretics;
c. Antibiotics;
d. High blood pressure medicines; or
e. Birth control pills; and

(e) Any person taking a prescription or over-the-counter drug should consult a physician before using a tanning device.

(2) Each tanning facility shall:

(a) Maintain the written or electronic consent forms of the parents or guardians for:

1. A period of not less than two (2) years; and
2. Make the forms available to cabinet personnel or a local health department upon request.

(b) Maintain written or electronic records showing the dates and duration of use of a tanning device at the tanning facility by minors fourteen (14) years of age to eighteen (18) years of age;

(c) Maintain those records for a period of not less than two (2) years;

(d) Make the records available to the cabinet or local health department personnel for inspection upon request; and

(e) Ensure patrons use protective eyewear by:

1. Providing single use disposable eyewear; or
2. Allowing patrons to provide their own eyewear.

Section 5. Monitoring. (1)The cabinet or local health department shall conduct on-site monitoring of a tanning facility upon:

(a) Initial facility registration; or

(b) Receipt of a complaint through the local health department.

(2) Each visit will be recorded on Form DFS-400, Tanning Facility Monitoring Form.

Section 6. Suspension of Registration. (1) If a violation is discovered, the local health department shall serve a registered facility with a written notice on form DFS-400, Tanning Facility Monitoring Form, specifying the nature of the violation and afford the facility thirty (30) days for corrective action.

(2) Reinspection shall be conducted no later than thirty (30) days following the issuance of the DFS-400. If the violation is unresolved, the facility shall receive an additional thirty (30) days to

correct the violation.

(3) At the end of sixty (60) days, if the violation has not been corrected, the registration of a tanning facility shall be suspended. The notice of suspension shall be provided in writing on form DFS-214, Enforcement Notice.

Section 7. Reinstatement of Suspended Registration. (1) A facility whose registration has been suspended may make application to the local health department for a re-inspection for the purpose of reinstatement of the registration on the form DFS-215, Application for Reinstatement.

(2) Within ten (10) days following receipt of an Application for Reinstatement, the local health department shall make a re-inspection.

(3) If the applicant is found to be in compliance with the requirements of this administrative regulation, the registration shall be reinstated.

Section 8 Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) Form "DFS-400, Tanning Facility Monitoring Form", edition 6/07.

(b) Form "DFS-214, Enforcement Notice", edition 8/96

(c) Form "DFS-215, Application for Reinstatement", edition 2/95.

(d) Form "DFS-303, Application for Registration", edition 11/06.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Department for Public Health, Division of Public Health Protection and Safety, Food Safety Branch, 275 East Main Street, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p.m.

WILLIAM D. HACKER, MD, Commissioner
MARK D. BIRDWHISTELL, Secretary

APPROVED BY AGENCY: July 12, 2007

FILED WITH LRC: July 13, 2007 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on August 21, 2007, at 9 a.m. in the Health Service Auditorium, Health Service Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 2007, five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business August 31, 2007. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Jill Brown, Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, Kentucky 40601, phone (502) 564-7905, fax (502) 564-7573.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Christine Atkinson, 502-564-7181

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the administrative process by which tanning facilities register with local health departments, outlines procedures for parental approval for minors, and defines the recordkeeping requirements for maintaining consent documents. It also requires tanning facilities to provide warning statements of the hazards associated with the usage of tanning devices.

(b) The necessity of this administrative regulation: HB 151 from the 2006 session created a new chapter of KRS Chapter 217 to prohibit minors from using tanning facilities without parental consent. This administrative regulation outlines the process for facility registration, record keeping, and identifies violations.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statues by establishing the registration procedures for tanning facilities and the parental approval process required for minors using a tanning facility.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will aid the enforcement of KRS 217.920 and 217.928 by establishing required documentation including parental consent forms, a statement of the hazards associated with using a tanning device, record keeping, and mandatory usage of protective eyewear.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect operators of tanning facilities and the 120 local health departments which will register these facilities and monitor for compliance. Due to the cabinet not having to previously regulate tanning facilities, the number of tanning facilities operating across the Commonwealth cannot be estimated.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Operators of tanning facilities will have to register with the local health department. Local health departments will be required to investigate any compliant that a facility is operating in direct violation of the guidelines in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Operators of tanning facilities will be required to pay a registration fee of $20 a year as mandated by HB 151 2006 session. Local health departments will have costs stemming from duplication of this administrative regulation, duplication of administrative forms, travel costs and cost of administrative time to locate the tanning facilities and investigate when a complaint is filed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The tanning facilities will be able to provide warnings about the services they provide and have uniform standards in which to operate. Local health departments will be able to identify all tanning facilities in their jurisdiction, ensure that all are knowledgeable on the policies of operation and will serve to protect the citizens of the Commonwealth, in particular, minors.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Start up costs will be incurred for duplication of the administrative regulation for industry and local health departments; duplication of administrative forms for administering the program; travel costs to locate the tanning facilities and educate the management or owner about the new guidelines; a training session for implementation of the program; a new data screen within the current computer system must be created in order to record the registrations; and a new program code must be created in the Environmental Health Management Information System (EHMIS) system.

(b) On a continuing basis: Costs will be incurred concerning the time and travel costs for local health departments required to respond to any consumer complaints; the registering and inspecting of any new tanning facility that opens within the local health department service area; and the duplication and distribution of permit renewals on an annual basis and the administrative tasks associated with their collection. In the case of administrative hearings or conferences, administrative time will be used to sort com-

plaints.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Agency funds generated through the $20 registration fee mandated in HB 151 will be used to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: A $20 increase in fees, as mandated in the legislation, will be required to implement this regulation. The fee is necessary because there will be initial and continuing costs with the implementation of this administrative regulation. This fee will help cover the administrative time that is needed to register and inspect facilities, travel costs, training of local health department staff and to generate renewals annually. It will lower the amount of agency funds that will be required to fund this program on a continuing basis.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation implements the $20 annual fee mandated by HB 151 that will be required when a tanning facility registers with a local health department.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation will affect the 120 local health departments that will be responsible for the registering and inspecting of tanning facilities.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. 21 C.F.R.1040 20; KRS Chapter 13B, 211.005, 211.015, 211.025, 211.180, 211.760, 211.992, 217.920 to 217.928

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The local public health departments will realize an increase in revenues from the $20 registration fee that is mandated by HB 151 2006 session. Because it is currently not possible to estimate the number of tanning facilities that will be required to register under the provisions of HB 151, the total amount of revenue generated in the first year cannot be determined.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The local public health departments will realize an increase in revenues from the $20 registration fee that is mandated by HB 151 2006 session. Because it is currently not possible to estimate the number of tanning facilities that will be required to register under the provisions of HB 151, the total amount of revenue generated in subsequent years cannot be determined.

(c) How much will it cost to administer this program for the first year? The first year will have increased expenditures which include but are not limited to travel, duplication, administrative time to educate staff on new guidelines, training for the new program and the building of a new computer screen within the current environmental program in use. Actual costs to administer the program in the first year cannot be determined as the number of tanning facilities to be monitored is unknown.

(d) How much will it cost to administer this program for subsequent years? Staff time and administrative time will be used to aid with answering questions that the facilities may have pertaining to this regulation. The costs of travel and duplication will be ongoing costs. Actual costs to administer the program in subsequent years cannot be determined as the number of tanning facilities to be monitored is unknown.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE
Minutes of July 9, 2007 Meeting

The July meeting of the Administrative Regulation Review Subcommittee was held on Monday, July 9, 2007 at 9:00 a.m., in Room 149 of the Capitol Annex. Representative Robert Damron called the meeting to order, the roll call was taken. The minutes of the June 7, 2007 meeting were approved.

Present were:

Members: Senators Alice Forgy Kerr, Joey Pendleton, Richard "Dick" Roeding and Gary Tapp; and Representatives Robert Damron, Danny Ford, and Ron Weston.

LRC Staff: Dave Nicholas, Donna Little, Kara Daniel, Emily Harkenrider, Emily Caudill, Jennifer Beeler and Ellen Steinberg.

Guests: Carla Hawkins, Thomas B. Stephens, Personnel Cabinet, Beau Barnes, Teachers' Retirement System; Michael Burleson, Kentucky Board of Pharmacy; Michael Rodman, C. Lloyd Vest, Kentucky Board of Medical Licensure; Norman Brown, Lee Harris, Jerry McMahan, Kentucky Real Estate Commission; David Cox, Kentucky State Board of Licensure for Professional Engineers and Land Surveyors; Nathan Goldman, Board of Nursing; Becky Klusch, Donna Sims, Board of Physical Therapy; Larry Disney, Jim Grawe, Kentucky Real Estate Appraisers Board; Ken Mitchell, Joel Schrader, Office of the 911 Coordinator; Morgain Sprague, Darren Moore, Department of Fish and Wildlife Resources; Karen Howard, Mavis McCowan, Trena Rogers, Department of Corrections; Rick Kurtz, Department of State Police; Steve Lynn, Kentucky Law Enforcement Council; Susan Bush, Mike Hanes, Department for Natural Resources; James Acquisto, Leah Boggs, Allen Wagers; Office of Charitable Gaming; Ed Monahan, Catholic Conference of Kentucky; Shane O'Donley, Cabinet for Health and Family Services.

The Administrative Regulation Review Subcommittee met on July 9, 2007 and submits this report:

Administrative regulations reviewed by the Subcommittee:

PERSONNEL CABINET: Classified

101 KAR 2.046. Applications, qualifications and examinations. Carla Hawkins, commissioner, and Thomas Stephens, executive director, represented the cabinet.

In response to questions by Co-Chair Roeding, Ms. Hawkins stated that an individual who took a test through the cabinet for a state job immediately learned his score, but could not learn his ranking until the application period had closed. An agency was required to hire out of the top five but was not required to hire in order of the scores.

Mr. Stephens stated that there are approximately 1400 different state job classifications and only about ten (10) per cent of the positions required the applicant to take a test to qualify.

Ms. Hawkins stated that all open positions were posted on the cabinet's Website and that a new system to be implemented in the fall would provide more specific information about available jobs and would allow potential applicants to register to receive email alerts when new jobs were posted. It would also allow applicants to apply from home after business hours. She stated that the cabinet has communicated with the Department for Libraries and Archives to raise awareness about the Website through the state's libraries.

In response to questions by Co-Chair Damron, Ms. Hawkins stated that the percentage of state jobs that required applicants to take a test may have been higher under previous administrations but that the cabinet had been gradually moving away from tests prior to the current administration. She stated that tests were potentially another barrier for applicants and there was concern that the tests only evaluated an applicant's skill at taking tests and had resulted in small applicant pools with few applicants who were veterans.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 to 5, 8, and 12 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 12 to incorporate by reference the required application form. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:056. Registers.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4, 7, and 8 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 8 to incorporate by reference the required application form. Without objection, and with agreement of the agency, the amendments were approved.

101 KAR 2:066. Certification and selection of eligibles for appointment.

A motion was made and seconded to approve the following amendments: (1) to amend the TITLE, the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 1 and 2 to use the term "eligible applicant" instead of "eligibles"; and (2) to amend Sections 1 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

TEACHERS' RETIREMENT SYSTEM: General Rules

102 KAR 1:030. Substitute teachers and nonuniversity, noncommunity college part-time members. Beau Barnes, deputy executive secretary of operations, represented the agency.

In response to a question by Co-Chair Roeding, Mr. Barnes stated that allowing members to purchase service credit incurred no cost to the retirement system.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 2 to 4 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:036. Part-time service for university, college, and community college members.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Section 1 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

102 KAR 1:038. Fractional service year for members initially employed on a full-time basis.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; and (3) to amend Sections 1 to 6 to reformat the requirements and to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

GENERAL GOVERNMENT: Kentucky Board of Pharmacy: Board

201 KAR 2:250. Pharmacist Recovery Network Committee. Mike Burleson, executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Sections 1, 3, and 5 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without

objection, and with agreement of the agency, the amendments were approved.

Kentucky Board of Medical Licensure: Board

201 KAR 9:460. Written Plan. Lloyd Vest, general counsel, and Mike Rodman, assistant executive director, represented the board.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the formatting and drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Real Estate Commission: Real Estate Commission

201 KAR 11:220. Errors and omissions insurance requirements. Norman Brown, executive director; Lee Harris, general counsel; and Jerry McMahan, chair, represented the commission.

In response to a question by Senator Tapp, Mr. Brown stated that this administrative regulation lowered the minimum requirements for coverage because the commission had previously set the required insurance limits too high and, as a result, many real estate agents could not obtain coverage.

Kentucky State Board of Licensure for Professional Engineers and Land Surveyors: Board

201 KAR 18:040. Fees. David Cox, executive director, represented the board.

Board of Nursing: Board

201 KAR 20:070 & E. Licensure by examination. Nathan Goldman, general counsel, represented the board.

In response to questions by Co-Chair Damron, Mr. Goldman stated that the Nurse Licensure Compact was effective in 22 states and that the National Council of State Boards of Nursing had been involved in efforts to get other states to enact the compact, although the board had not.

201 KAR 20:370. Applications for licensure and registration.

201 KAR 20:411. Sexual Assault Nurse Examiner Program standards and credential requirements.

Board of Physical Therapy: Board

201 KAR 22:020. Eligibility and credentialing procedure. Becky Klusch, executive director, represented the board.

201 KAR 22:040. Procedure for renewal or reinstatement of a credential for a physical therapist or a physical therapist assistant.

In response to a question by Co-Chair Roeding, Ms. Klusch stated that this administrative regulation was eliminating inactive status from the licensing categories because that category allowed individuals to remain on inactive status for many years and return to active status after obtaining only two years of continuing education. Without inactive status, an individual could only let his or her license lapse for three years before obtaining continuing education and returning the license to active status.

Kentucky Real Estate Appraisers Board: Board

201 KAR 30:180. Distance education standards. Larry Disney, executive director, and Jim Grawe, general counsel, represented the board.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 to 9 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend Sections 4 and 5 to correct citations; (3) to amend Section 7 to correct the titles of forms; and (4) to amend Section 9 to incorporate a new form by reference. Without objection, and with agreement of the agency, the amendments were approved.

KENTUCKY OFFICE OF HOMELAND SECURITY: Office of the 911 Coordinator: Commercial Mobile Radio Service Emergency Telecommunications Board: Board

202 KAR 6:020. CMRS carrier cost recovery. Ken Mitchell, executive director, and Joel Schrader, deputy director for intergovernmental affairs, represented the board.

In response to a question by Co-Chair Roeding, Mr. Mitchell stated that a public safety answering point is the term used for the local 911 call centers.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs and Sections 2 and 9 to correct statutory citations; (2) to amend the TITLE, and Sections 1 to 7, 9, 15, and the material incorporated by reference to replace the term "carrier" with the statutory term "provider"; (3) to amend Section 3 to clarify the requirements imposed if a provider chooses an alternate reporting period for its recurring costs; (4) to amend Section 8 to clarify that costs other than those listed must be attributable to E911 call completion and approved by the board in order to be recoverable; (5) to amend Section 15 to update the edition date of the material incorporated by reference; and (6) to amend Sections 3, 5, 6, and 7 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:030. Confidential and proprietary information.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph to correct a statutory citation; (2) to amend Section 1 to delete superfluous language; (2) to amend Sections 1 and 2 to use statutory terms; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Sections 3 and 4 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:060. PSAP pro rata fund disbursement.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Section 1 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:070. PSAP Workload Fund disbursement.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 4 to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to insert an omitted word; (3) to amend Section 1 to clarify an acronym; (4) to amend Section 2 to delete repetitive language and to clarify when a list of zip codes in a PSAP's jurisdiction is to be submitted to the PSAP and how the allocation of zip code areas to a PSAP is made; and (5) to amend the TITLE and Sections 2 and 4 to make technical corrections and comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

202 KAR 6:100. PSAP Phase II certification.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION AND CONFORMITY paragraphs and Section 7 to correct statutory citations; (2) to amend Section 2 to use a statutory term; (3) to amend Section 4 to clarify how testing of PSAPs' mapping will be conducted; (4) to amend Section 8 to update the edition date of the table incorporated by reference; and (5) to amend Sections 2 to 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

COMMERCE CABINET: Department of Fish and Wildlife Resources: Licensing

301 KAR 5:030. Purchasing licenses and obtaining replacement licenses. Morgain Sprague, general counsel, and Darin Moore, administrative services director, represented the department.

In response to a question by Senator Ford, Mr. Moore stated that the department had considered expanding the disability license to other state retirees but that bills authorizing the expansion did not pass during the recent sessions of the General Assembly.

He stated he did not know what it would cost to expand it but would look at that issue in preparation for the next regular session of the General Assembly.

In response to a question by Senator Tapp, Mr. Moore stated the fee for a replacement license was increased to five dollars to make it consistent with other fees, and to cover the costs incurred by the department to verify the license and issue the replacement.

JUSTICE AND PUBLIC SAFETY CABINET: Department of Corrections: Office of the Secretary

501 KAR 6.020. Corrections policies and procedures. Karen Howard, attorney; Mavis McCowan, home incarceration and offender reentry program manager; and Trena Rogers, procedures development coordinator, represented the department.

A motion was made and seconded to approve the following amendments: to amend Section 1 and various policies and procedures to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:030. Kentucky State Reformatory.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to add policy 02-00-13 Inmate Canteen Committee and to correct various policy titles; (2) to amend policy 02-00-03 regarding disbursements from inmate accounts to correct a drafting error and clarify that legal filing fees will be processed like other fund requests; and (3) to amend Section 1 and various policies and procedures to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:070. Kentucky Correctional Institution for Women.

In response to a question by Representative Ford, Ms. Howard stated that one state institution was already smoke-free and the transition had gone well. She stated the institution transitioned to the policy gradually and offered smoking cessation classes to inmates. Ms. Rogers stated that several federal institutions were already smoke-free and more would soon be.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to update the edition date of the material incorporated by reference; and (2) to amend policy 09-13-01 to correct a typographical error. Without objection, and with agreement of the agency, the amendments were approved.

501 KAR 6:240. Home incarceration using an approved monitoring device.

In response to a question by Co-Chair Roeding, Ms. McCowan stated that inmates on home incarceration were monitored by the Division of Probation and Parole and that inmates had to get prior approval before engaging in recreational or other non-work activities

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to update the edition date of the material incorporated by reference; and (2) to amend CPP 25.12 to: (a) delete language that repeated a statute; (b) add an arrest for a misdemeanor or felony as a violation of the home incarceration program; (c) clarify the duties of the Probation and Parole Officer in the event of an escape from home incarceration; and (d) to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Department of State Police: Polygraph

502 KAR 20:020. Examiners. Karen Howard, attorney, and Richard Kurtz, polygraph program manager, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend Section 1 to broaden the definition of "sex crime"; (2) to amend Section 4 to restore language that was deleted in error and to correct the subparagraph numbering; (3) to amend the TITLE and Section 4 to clarify the subject matter of the administrative regulation; (4) to amend Section 3 to clarify that completion of fewer than three (3) charts will be recorded as "no opinion"; and (5) to amend Sections 1 to 5 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

Kentucky Law Enforcement Council: Council

503 KAR 1:170. Career Development Program. Steve Lynn, general counsel, represented the council.

In response to a question by Senator Tapp, Mr. Lynn stated that the program was paid for in part by the Kentucky Law Enforcement Foundation Fund but that individual officers or their agencies paid for the training they received.

A motion was made and seconded to approve the following amendments: (1) to amend the STATUTORY AUTHORITY paragraph to add a statutory citation; (2) to amend Section 3 to list the titles of the forms incorporated by reference and clarify that an applicant must complete the appropriate form; (3) to amend Sections 8, 10, and 21 to ensure that the names of the career step certificates and the titles of corresponding application forms incorporated by reference are consistent; (4) to amend Section 21 to update the edition dates of forms incorporated by reference; and (5) to amend Sections 3, 5, 6, 7, 8, 10 to 14, 17, and 18 to comply with the drafting and formatting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET: Department of Public Protection: Department for Natural Resources: Drugs Workplace Certification

805 KAR 11:001. Definitions for 805 KAR Chapter 11. Susan Bush, commissioner, and Mike Haines, general counsel, represented the department.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Section 1 to correct statutory citations; (2) to amend the STATUTORY AUTHORITY paragraph and Section 1 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 11.010. Requirements for application for certification of drug-free workplace.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO paragraph and Sections 1 to 6 to comply with the drafting and format requirements of KRS Chapter 13A; (2) to amend the STATUTORY AUTHORITY paragraph and Section 3 to correct citations; and (3) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220. Without objection, and with agreement of the agency, the amendments were approved.

805 KAR 11:020. Requirements for certification of drug-free workplace.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend the NECESSITY, FUNCTION, AND CONFORMITY paragraph to clearly state the necessity for and function served by this administrative regulation, as required by KRS 13A.220; (3) to amend Sections 1 to 6 to comply with the drafting and format requirements of KRS Chapter 13A; (4) to amend Sections 1 and 3 to specify that a return receipt or envelope shall be proof of acceptance of notification from the Office of Mine Safety and Licensing; (5) to amend Section 2 to: (a) clarify that "The Mine Safety and Health Administration Form 5000-23" shall serve as verification of attendance at the training program; and (b) establish requirements pertaining to reasonable suspicion testing; and (6) to amend Sections 2 and 6 to correct the title of the material incorporated by reference. Without objection, and with agreement of the agency,

the amendments were approved.

Office of Charitable Gaming: Charitable Gaming

820 KAR 1:001. Definitions for 820 KAR Chapter 1. Jim Acquisto, assistant executive director; Allen Wagers, director; and Leah Cooper Boggs, assistant director, represented the office. Ed Monahan, executive director of the Catholic Conference of Kentucky, also appeared in support of the administrative regulations.

A motion was made and seconded to approve the following amendments: to amend Section 1 to comply with the drafting requirements of KRS 13A.222(4)(e) and to insert an omitted word. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:015. Issuance of annual license for a charitable organization.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO and STATUTORY AUTHORITY paragraphs to correct statutory citations; (2) to amend Sections 3, 4, and 5 to comply with the drafting requirements of KRS Chapter 13A; and (3) to amend Section 4 to specify that the request to change the date, time, or location of a gaming session: (a) has to be submitted at least ten (10) days in advance; and (b) may be hand-delivered. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:025. Financial reports of a licensed charitable organization.

A motion was made and seconded to approve the following amendments: (1) to amend the RELATES TO, STATUTORY AUTHORITY, and NECESSITY, FUNCTION, AND CONFORMITY paragraphs to correct statutory citations; and (2) to amend Sections 2, 4, and 5 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1 029 Facility licensees.

820 KAR 1.032 Pulltab construction.

A motion was made and seconded to approve the following amendments: to amend Sections 5 and 6 to comply with the drafting requirements of KRS Chapter 13A Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:036. Pulltab rules of play.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1, 2, 4, 6, and 7 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Section 7 to provide that the form numbers on the winning ticket and the seal card need to match before a cumulative prize pool may be awarded Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1.046. Bingo rules of play.

A motion was made and seconded to approve the following amendments: to amend Sections 1 and 9 to comply with the drafting and format requirements of KRS Chapter 13A Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:050. Raffle standards.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1 055. Charity fundraising event standards.

A motion was made and seconded to approve the following amendments. to amend Sections 4 and 6 to comply with the drafting requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:056 Special limited charity fundraising event standards.

820 KAR 1:057. Accurate records.

A motion was made and seconded to approve the following amendments: to amend Section 3 to comply with the drafting and format requirements of KRS Chapter 13A. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:058. Gaming Occasion Records.

A motion was made and seconded to approve the following amendments: (1) to amend Sections 1 to 9 to comply with the drafting and format requirements of KRS Chapter 13A; and (2) to amend Sections 6 and 7 to delete the requirement that the specified event records include the printed name and signature of each person responsible for the event records. Without objection, and with agreement of the agency, the amendments were approved.

820 KAR 1:120. Allowable expenses.

CABINET FOR HEALTH AND FAMILY SERVICES: Office of Health Policy: Division of Certificate of Need: Certificate of Need

900 KAR 6.050. Certificate of need administrative regulation. Shane O'Donley, director, represented the division.

A motion was made and seconded to approve the following amendments: (1) to amend Section 8(2) to delete the proposed language that would have authorized the Division of Certificate of Need to grant nonsubstantive review status to an application for which a CON is required if the proposal involved an application by an existing licensed hospital to add to its existing acute care bed inventory, and the requirements established in that section were met, (2) to amend Sections 1, 6, 8, 10, 16, 17, 18, 20, 27, and 28 to comply with the drafting and format requirements of KRS Chapter 13A; and (3) to amend Section 16 to: (a) delete language prohibiting a health facility established without a CON from requesting a public hearing as an affected person, to comply with KRS 13A.120(2)(1), 216B.015(3), 216B.020(2)(a), and 216B.085; and (b) specify that the hearing shall conclude when the additional information is filed or at the end of the designated time period, whichever occurs first. Without objection, and with agreement of the agency, the amendments were approved.

The following administrative regulations were deferred to the next meeting of the subcommittee:

EDUCATION CABINET: Kentucky Board of Education: Department of Education:
School Terms, Attendance and Operation

702 KAR 7.065. Designation of agent to manage high school interscholastic athletics.

Exceptional and Handicapped Programs

707 KAR 1.280. Definitions.
707 KAR 1.290. Free appropriate public education.
707 KAR 1:300. Child find, evaluation, and reevaluation.
707 KAR 1.310. Determination of eligibility
707 KAR 1 320. Individual education program
707 KAR 1:331. Repeal of 707 KAR 1:330, Comprehensive system of personnel.
707 KAR 1:340. Procedural safeguards and state compliant procedures.
707 KAR 1 350. Placement decisions.
707 KAR 1:360. Confidentiality of information.
707 KAR 1.370. Children with disabilities enrolled in private schools.
707 KAR 1 380. Monitoring and recovery of funds.

CABINET FOR HEALTH AND FAMILY SERVICES: Department for Public Health: Radiation Operators Certification

902 KAR 105:040. General radiation operator requirements.
902 KAR 105.061. Repeal of 902 KAR 105.060.
902 KAR 105.070. Violations and endorsement.

Department for Medicaid Services: Division of Hospital and Provider Operations: Payment and Services

907 KAR 3.005. Physicians' services.
907 KAR 3 010. Reimbursement for physicians' services.

The subcommittee adjourned until August 14, 2007 at 10 a.m.

OTHER COMMITTEE REPORTS

COMPILER'S NOTE: In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT
Meeting of July 13, 2007

The following administrative regulations were available for consideration and placed on the agenda of the Interim Joint Committee on Local Government for its meeting of July 13, 2007, having been referred to the Committee on July 5, 2007, pursuant to KRS 13A 290(6):

815 KAR 7:125
815 KAR 20:078

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2):

None

The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320:

None

The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.

The following administrative regulations were deferred pursuant to KRS 13A.300:

None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 13, 2007 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

CUMULATIVE SUPPLEMENT

Regulation Number	33 Ky.R. Page No.	Effective Date

VOLUME 33

The administrative regulations listed under VOLUME 33 are those administrative regulations that were originally published in Volume 33 (last year's) issues of the Administrative Register but had not yet gone into effect when the 2007 bound Volumes were published.

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note. Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

31 KAR 5.010E	3325	4-2-07
201 KAR 20.070E	3586	5-11-07
301 KAR 2 221E	1493	11-1-06
301 KAR 2 222E	1494	11-1-06
301 KAR 2 223E	1500	11-1-06
502 KAR 32.010	3327	4-12-07
806 KAR 17 540E	1233	10-13-06
806 KAR 17:545E	1235	10-13-06
806 KAR 17 555E	1238	10-13-06
902 KAR 45:150E	1502	11-14-06
907 KAR 1:025E	3143	3-1-07
907 KAR 1:155		
Resubmitted	1058	9-1-06
907 KAR 3:010E		
Resubmitted	1062	9-1-06
908 KAR 2:190E	1507	10-17-06

ORDINARY ADMINISTRATIVE REGULATIONS:

11 KAR 4:080		
Amended	3224	
As Amended	3589	
11 KAR 5:033		
Amended	3225	
As Amended	3589	
11 KAR 5 034		
Amended	3226	
As Amended	3590	
11 KAR 5:140		
Amended	3228	
11 KAR 6.010		
Amended	3230	
As Amended	3590	
11 KAR 16 010		
Amended	3232	
As Amended	3592	
11 KAR 16:070	3304	
As Amended	3593	
16 KAR 1:030		
Amended	3423	
16 KAR 9:080	3567	(See 34 Ky.R)
17 KAR 1:020	3078	
As Amended	3593	
31 KAR 3 010		
Amended	3235	
As Amended	3595	
31 KAR 4:100		
Amended	3237	
As Amended	3596	
31 KAR 5 010		
Amended	3425	(See 34 Ky.R.)
101 KAR 2.046		
Amended	4195	(See 34 Ky.R.)
101 KAR 2 056		
Amended	4197	(See 34 Ky R)
101 KAR 2.066		
Amended	4199	(See 34 Ky.R.)
102 KAR 1:030		
Amended	3427	(See 34 Ky.R.)
102 KAR 1 036		
Amended	3428	(See 34 Ky.R.)
102 KAR 1.038		
Amended	3430	(See 34 Ky.R)
102 KAR 1:175		
Amended	3431	(See 34 Ky.R)
103 KAR 20:500	1013	
106 KAR 5:005	3113	
As Amended	3597	
106 KAR 5.010	3114	
As Amended	3598	
106 KAR 5:020	3116	
As Amended	3599	
106 KAR 5:030	3118	
As Amended	3600	
106 KAR 5.040	3120	
As Amended	3601	
201 KAR 2:250		
Amended	4201	(See 34 Ky.R.)
201 KAR 2:260	3305	
As Amended	3602	
201 KAR 9:460	4269	(See 34 Ky R.)
201 KAR 11:220		
Amended	3434	
201 KAR 16:010		
Amended	3238	(See 34 Ky R.)
201 KAR 16:060		
Amended	3240	
201 KAR 18:040		
Amended	4203	
201 KAR 18:111	3569	(See 34 Ky.R)
201 KAR 20 070		
Amended	4205	
201 KAR 20:370		
Amended	4207	
201 KAR 20:411		
Amended	4209	
201 KAR 22:020		
Amended	3436	
201 KAR 22:040		
Amended	3438	
201 KAR 30:180		
Amended	4211	(See 34 Ky.R.)
201 KAR 36:070		
Amended	3242	
202 KAR 6:020		
Amended	4214	(See 34 Ky.R.)
202 KAR 6.030		
Amended	4217	(See 34 Ky.R)
202 KAR 6 060		
Amended	4218	(See 34 Ky.R.)
202 KAR 6:070		
Amended	4220	(See 34 Ky.R.)
202 KAR 6:100		
Amended	4221	(See 34 Ky R.)
301 KAR 2 122	2831	
301 KAR 2 132		
Amended	3440	(See 34 Ky.R.)
301 KAR 2:172		
Amended	3444	(See 34 Ky R.)
301 KAR 2:175	3570	
301 KAR 2:177	3571	
301 KAR 2 178		
Amended	3447	
301 KAR 2.185		
Amended	3243	
As Amended	3603	
301 KAR 2:195		

Regulation Number	33 Ky.R. Page No.	Effective Date
Amended	3452	(See 34 Ky.R.)
301 KAR 2.251		
Amended	3426	
As Amended	3604	
301 KAR 3.022		
Amended	3456	
301 KAR 5:030		
Amended	4224	
401 KAR 57:002		
Amended	4227	
401 KAR 58:025		
Amended	4229	
401 KAR 60:005		
Amended	4231	
401 KAR 60:670		
Amended	4234	
401 KAR 63:002		
Amended	4236	
401 KAR 63.023*(r)*	4270	
401 KAR 64.001	4271	
401 KAR 64:005	4275	
401 KAR 64.010	4279	
401 KAR 64:020	4283	
401 KAR 64:030	4286	
401 KAR 64:050	4288	
501 KAR 6.020		
Amended	4241	(See 34 Ky.R.)
501 KAR 6:030		
Amended	4243	(See 34 Ky.R.)
501 KAR 6:070		
Amended	4245	(See 34 Ky.R.)
501 KAR 6.240		
Amended	4247	(See 34 Ky.R.)
502 KAR 20:020		
Amended	4249	(See 34 Ky.R.)
502 KAR 32:010		
Amended	3459	(See 34 Ky.R.)
503 KAR 1:170		
Amended	4253	(See 34 Ky.R.)
603 KAR 4.045		
Amended	3042	
As Amended	4162	
701 KAR 5:110		
Amended	3045	
702 KAR 7:065		
Amended	3461	(See 34 Ky.R.)
707 KAR 1:280		
Amended	3463	(See 34 Ky.R.)
707 KAR 1:290		
Amended	3468	
707 KAR 1.300		
Amended	3470	
707 KAR 1.310		
Amended	3473	
707 KAR 1:320		
Amended	3476	(See 34 Ky.R.)
707 KAR 1:331	3572	
707 KAR 1:340		
Amended	3480	(See 34 Ky.R.)
707 KAR 1:350		
Amended	3488	
707 KAR 1:360		
Amended	3490	
707 KAR 1:370		
Amended	3492	
707 KAR 1:380		
Amended	3496	
802 KAR 1:010		
Amended	2202	
Amended	3217	
As Amended	4164	
803 KAR 2:300		
Amended	3499	(See 34 Ky R.)
803 KAR 2:305		
Amended	3501	(See 34 Ky.R.)
803 KAR 2:318		
Amended	3503	(See 34 Ky.R.)
804 KAR 9:040		
Amended	3506	
805 KAR 7:010		
Amended	3076	
Amended	3413	(See 33 Ky R.)
805 KAR 7.100	3124	
Amended	3414	(See 33 Ky R)
805 KAR 11.001	3126	(See 34 Ky.R.)
Amended	3416	
805 KAR 11 010	3128	(See 34 Ky.R.)
Amended	3417	
805 KAR 11.020	3130	(See 34 Ky.R.)
Amended	3419	
806 KAR 6:120	4290	(See 34 Ky.R.)
806 KAR 12:120	4292	(See 34 Ky.R.)
806 KAR 12:140	4294	(See 34 Ky.R.)
806 KAR 12:150	4299	(See 34 Ky R.)
806 KAR 12:160	4301	(See 34 Ky.R.)
806 KAR 12:170	4305	(See 34 Ky.R.)
806 KAR 14.005		
Amended	4258	
806 KAR 15 060	4307	(See 34 Ky.R.)
806 KAR 15:070	4311	(See 34 Ky.R.)
815 KAR 4:010		
Amended	3249	
As Amended	4167	
815 KAR 7:120		
Amended	3250	
As Amended	4168	
815 KAR 7.125		
Amended	3253	(See 34 Ky.R.)
815 KAR 10.060		
Amended	3255	
As Amended	4169	
815 KAR 20:015	3308	
As Amended	4172	
815 KAR 20:020		
Amended	3258	
815 KAR 20:078		
Amended	3262	
815 KAR 20:110		
Amended	3264	
As Amended	4173	
815 KAR 20:120		
Amended	3266	
As Amended	4174	
815 KAR 20:130		
Amended	3273	
As Amended	4180	
815 KAR 20:150		
Amended	3277	
As Amended	4183	
815 KAR 35:060		
Amended	3279	
As Amended	4184	
820 KAR 1:001		
Amended	3508	(See 34 Ky.R.)
820 KAR 1:015		
Amended	3511	(See 34 Ky R.)
820 KAR 1:025		
Amended	3512	(See 34 Ky R)
820 KAR 1:029		
Amended	3514	
820 KAR 1:032		
Amended	3516	(See 34 Ky.R.)
820 KAR 1.036		
Amended	3518	(See 34 Ky.R.)

VOLUME 34

EMERGENCY ADMINISTRATIVE REGULATIONS:

(Note: Emergency regulations expire 180 days from the date filed; or 180 days from the date filed plus number of days of requested extension, or upon replacement or repeal, whichever occurs first.)

ORDINARY ADMINISTRATIVE REGULATIONS:

Regulation Number	33 Ky.R. Page No.	Effective Date
202 KAR 6.020		(See 33 Ky.R.)
As Amended	233	
202 KAR 6 030		(See 33 Ky.R)
As Amended	235	
202 KAR 6.060		(See 33 Ky.R.)
As Amended	236	
202 KAR 6:070		(See 33 Ky.R.)
As Amended	236	
202 KAR 6:100		(See 33 Ky.R.)
As Amended	238	
300 KAR 1:010		
Amended	357	
301 KAR 1:015		
Amended	364	
301 KAR 1:155		
Amended	367	
301 KAR 1:201		
Amended	369	
301 KAR 1:410		
Amended	374	
301 KAR 2.132		(See 33 Ky.R.)
As Amended	17	
301 KAR 2:172		(See 33 Ky R.)
As Amended	20	
301 KAR 2:195		(See 33 Ky R.)
As Amended	22	
302 KAR 20.010		
Amended	377	
302 KAR 20.020		
Amended	379	
302 KAR 20.030		
Amended	382	
302 KAR 20:040		
Amended	383	
302 KAR 20:065		
Amended	390	
501 KAR 6.020		(See 33 Ky R.)
As Amended	239	
501 KAR 6.030		(See 33 Ky R.)
As Amended	240	
501 KAR 6:070		(See 33 Ky.R)
As Amended	242	
501 KAR 6:240		(See 33 Ky.R)
As Amended	243	
501 KAR 6:050		
Amended	127	
502 KAR 20:020		(See 33 Ky.R.)
As Amended	243	
502 KAR 32:010		(See 33 Ky.R.)
As Amended	27	
503 KAR 1:170		(See 33 Ky R.)
As Amended	245	
601 KAR 1:025		
Amended	395	
702 KAR 7:065		(See 33 Ky R)
Amended	40	
707 KAR 1:280		(See 33 Ky.R.)
Amended	41	
707 KAR 1:320		(See 33 Ky.R.)
Amended	46	
707 KAR 1:340		(See 33 Ky.R)
Amended	51	
725 KAR 1 030		
Amended	398	
803 KAR 2 300		(See 33 Ky.R.)
As Amended	28	
803 KAR 2:305		(See 33 Ky.R.)
As Amended	29	
803 KAR 2:318		(See 33 Ky R.)
As Amended	30	
805 KAR 7:010		(See 33 Ky R.)
As Amended	30	
805 KAR 7:100		(See 33 Ky.R.)
As Amended	32	
805 KAR 11:001		(See 33 Ky R.)
As Amended	249	
805 KAR 11:010		(See 33 Ky.R.)
As Amended	250	
805 KAR 11.020		(See 33 Ky.R.)
As Amended	251	
806 KAR 6:120		(See 33 Ky.R.)
Amended	284	
806 KAR 12:120		(See 33 Ky.R.)
Amended	286	
806 KAR 12:140		(See 33 Ky.R.)
Amended	288	
806 KAR 12:150		(See 33 Ky.R.)
Amended	293	
806 KAR 12:160		(See 33 Ky.R.)
Amended	295	
806 KAR 12:170		(See 33 Ky.R.)
Amended	298	
806 KAR 15.060		(See 33 Ky.R.)
Amended	300	
806 KAR 15:070		(See 33 Ky.R.)
Amended	304	
806 KAR 17:545		
Amended	398	
806 KAR 17:555		
Amended	402	
807 KAR 5:110		
Amended	130	
810 KAR 1.015		
Amended	405	
815 KAR 7.125		(See 33 Ky.R.)
As Amended	33	
815 KAR 20.078		(See 33 Ky.R.)
As Amended	34	
820 KAR 1:001		(See 33 Ky.R.)
As Amended	253	
820 KAR 1:015		(See 33 Ky R.)
As Amended	255	
820 KAR 1.025		(See 33 Ky R.)
Amended	58	
As Amended	256	
820 KAR 1:032		(See 33 Ky.R.)
Amended	60	
As Amended	257	
820 KAR 1:036		(See 33 Ky.R.)
Amended	63	
As Amended	259	
820 KAR 1:046		(See 33 Ky.R.)
Amended	66	
As Amended	262	
820 KAR 1:050		(See 33 Ky.R.)
Amended	69	
As Amended	264	
820 KAR 1.055		(See 33 Ky R.)
As Amended	265	
820 KAR 1 057		(See 33 Ky.R.)
Amended	70	
As Amended	266	
820 KAR 1 058		(See 33 Ky.R.)
Amended	72	
As Amended	266	
820 KAR 1:120		(See 33 Ky R.)
Amended	77	
900 KAR 5:020		
Amended	408	
900 KAR 6.030		
Amended	409	
900 KAR 6:050		(See 33 Ky.R.)
Amended	78	
As Amended	270	

Regulation Number	33 Ky.R. Page No.	Effective Date	Regulation Number	33 Ky.R. Page No.	Effective Date
902 KAR 2 080		(See 33 Ky R)			
As Amended	35				
902 KAR 20 009					
Amended	410				
902 KAR 45:120					
Amended	424				
902 KAR 105.010					
Amended	133				
902 KAR 105.030					
Amended	136				
902 KAR 105 081	145				
907 KAR 1:015					
Amended	425				
907 KAR 1:145					
Amended	428				
907 KAR 1:170					
Amended	442				
907 KAR 1:762					
Amended	446				
907 KAR 3 005					
Amended	451				
907 KAR 3:010					
Amended	456				
907 KAR 3 090					
Amended	460				
908 KAR 3 050		(See 33 Ky.R.)			
As Amended	36				
908 KAR 3:060		(See 33 Ky.R.)			
As Amended	37				
910 KAR 1:240					
Amended	472				
920 KAR 2:040					
Amended	140				
922 KAR 1 050					
Amended	477				
922 KAR 1.300		(See 33 Ky R)			
Amended	307				
922 KAR 1.310		(See 33 Ky.R.)			
Amended	316				
922 KAR 1:360					
Amended	481				
922 KAR 2:160					
Amended	487				
922 KAR 2:180					
Amended	499				

* Statement of Consideration not filed by deadline
** Withdrawn, not in effect within 1 year of publication
*** Withdrawn before being printed in Register
(r) Repealer regulation: KRS 13A.310-on the effective date of an administrative regulation that repeals another, the regulations compiler shall delete the repealed administrative regulation and the repealing administrative regulation.

KRS SECTION	REGULATION
13B	902 KAR 45.075
	910 KAR 1:240
	920 KAR 2 040
	922 KAR 1:360
16.505 - 16.652	105 KAR 1.204
	105 KAR 1:270
	105 KAR 1:380
17.165	910 KAR 1:240
61.510 - 61.705	105 KAR 1:204
	105 KAR 1:270
	105 KAR 1:380
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